

IN THE SUPREME COURT OF OHIO

PROGRESSOHIO.ORG, INC., ET AL.

Plaintiffs,

v.

JOBSSOHIO, ET AL

Defendants.

) Case No.: 2012-1272  
)  
) On Appeal From the Tenth District  
) Court of Appeals  
)  
)  
)  
)  
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)  
)

MOTION TO WITHDRAW AS COUNSEL IN ORDER TO BE  
MADE A PARTY/APPELLANT IN THIS ACTION

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Victoria E. Ullmann, (movant or Ullmann) is the individual who has created and developed this case since before the law creating Jobs Ohio was out of committee in the Ohio Senate. She moves this court to allow her to change her role in this appeal from lead counsel to lead *pro se* appellant. S. Ct. Rule of Practice 4.01(A) allows a motion to be filed in an appeal to request the court grant relief. The questionable acts of Progress Ohio and the 1851 Center for Constitutional law have made it necessary for movant to protect the significant interest she has in this case by asking the court to grant her appellant status.

MEMORANDUM IN SUPPORT

Ullmann was initially planning to be the first named *pro se* plaintiff in this case. She only represented Progress Ohio under a very specific agreement that they have now breached by allowing the 1851 Center for Constitutional Law to simply seize this case. The remedy for breach under the agreement is for Ullmann to return to her lead position as an independent *pro se* party, which this court can grant. Since movant created this litigation, she has an interest sufficient for intervention as of right pursuant to Rule 24 of the Ohio Rules of Civil Procedure. Ullmann's position is supported by the facts underlying this litigation, the civil and court rules and the Rules of Professional Conduct. Because this motion involves a dispute with a client, movant has considerable leeway in presentation of factual information regarding the litigation and contractual breach. Rules of Professional Conduct 1.6 B (5).

Movant confirms that all the factual materials in the following memorandum are true to the best of her knowledge and verified pursuant to Rule 11 of the Ohio Rules of Civil Procedure.

***A. Progress Ohio does not own this litigation as the client generally does in other legal matters.***

This case is unique, as it is a true *pro bono publico* case. The original three attorneys in the case appear as individuals in specific roles, but all are in fact stewards representing the greater whole of the citizens of Ohio. The issue currently before the court is whether great public interest standing remains a viable principle in Ohio.

A basic component of most attorney client relationships is that the clients own their cases, because they own the problem and the attorney serves only as counselor and advisor. In other words, the client owns the case because they have *standing to sue*. The lawyer could never own the case since they would have no standing to litigate the case without the client. In this case, movant has standing to sue and never needed Progress Ohio at all bring this litigation. At this point they are a detriment to this case. Any citizen can serve as a plaintiff/appellant if great public interest standing is available. Movant can be an attorney/appellant *pro se* in the same capacity at Skindell and Murray.

Ullmann's investment of time and effort in creating this litigation gives her superior claim to it of anyone else who has ever been involved in it. Over two years ago, Ullmann realized that there were seven constitutional infirmities in the JobsOhio litigation and testified before the Senate Finance Committee in February, 2011. At that time she outlined all the arguments that support this action and that forms the basis of everything else that was done in this case. As part of her testimony, she informed the committee that she was fully prepared to bring a case challenging the constitutionality of JobsOhio *pro se* if the legislation was enacted. Even if none of these other plaintiffs joined the case, Ullmann would have brought this case *pro se*. After making such a vow before the Senate Finance Committee, under no circumstances

would movant fail to follow through.<sup>1</sup> Approximately 40 people, including Senator Skindell were present when she stated her intention to bring this case.

Ullmann spent hundreds of hours working on this case. Ullmann never kept time on the case because she was acting pro se and in her own interest, as well as acting on behalf of Progress Ohio. Since this case never would have been filed at all without Ullmann's initiative, her ownership of it is irrefutable. A ball park estimate for the value of her time is well over \$100,000. Progress Ohio has spent a small amount of money on copies and court fees, amounting to less than \$600. Rothenberg spent some time in conference calls and meetings and prepared press releases and organized press contacts. He has paid nothing for Ullmann's services. Progress Ohio does not own this case and therefore it cannot give it away. Progress Ohio's breach of contract and attempt to deprive Ullmann of the case can also be viewed as a conversion with this motion a form of replevin, as well as breach of contract.

***B. Ullmann has a right to intervene pursuant to Rules 24 of the Rules of Civil Procedure.***

Because movant is the creator of this case and has had primary responsibility for it for two years, she is not an intervener in the strict sense. But the criteria for determining intervention as of right, provides a standard for determining this motion.

Rule 24 of the Ohio Rules of Civil Procedure states:

**RULE 24.**

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<sup>1</sup> During this same testimony, Ullmann also stated that Mark Kvamme, the individual Governor Kasich chose to be his director of development, could not serve in the role. The governor is well aware that Ullmann is largely responsible for both this action and the mandamus to remove Kvamme. The governor has become more aggressive and threatening as this case has continued and has made attacks upon movant and the others here.

## Intervention

### (A) Intervention of right.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Movant has an interest to control and litigate this case, as it is her creation and she bears full responsibility for it before the courts and the public. She has the necessary standing to be a party to the case and protect her interest. Movant has done a majority of the work on this case over the past two years, and argued the standing issues before the trial court, 10<sup>th</sup> District and in the Memorandum in Support of Jurisdiction here. She was primary counsel for this group filing the intervener motion in *State ex rel. JobsOhio v. Goodman*, 2012 Ohio-1372 and the complaint and memorandum in *Progress Ohio v. Kasich*, 2011-Ohio- 622. Public record is undeniable that she is the one with the overarching interest relating to this case and the interest of Progress Ohio and even the other attorney appellants pales in comparison to hers.

Ullmann needs to protect her case from the 1851 Center since their desire to take possession of the case is highly suspect. They expressed no interest in it until it reached this Court. They will not state a position on the merits. (See Ex. 1) Thompson also states repeatedly that he plans to try to force taxpayer standing arguments into this case despite the fact that issue was never pled or argued and in fact waived below. (See Ex 1) Thompson has already damaged the case by inducing breach of contract and forcing Ullmann to seek redress here. The disingenuous way he insinuated himself into this litigation is indicative of highly questionable motivations.

Movant's interest will be destroyed if these unconscionable acts are allowed to derail this litigation. Ullmann's interest is in briefing and arguing this case before the Court and on remand on the merits. Anything that prevents that from occurring impedes Ullmann's interest and she is then entitled to become a party to protect that interest. Ullmann can only protect this case as an independent appellant who can file a brief and argue the case. As Ullmann was the one that moved this case into this Court and convinced the Court to hear it, she has an interest in being the one to argue the case she constructed. This appeal is the culmination of 2 years of work focused on getting the case here. Ullmann has a paramount interest in this litigation and she is entitled to protect it.

***C. Progress Ohio is in breach of a specific agreement with movant.***

Progress Ohio was the last to join the litigation group and had limited interest in participating in the case. They did not want to actually hire an attorney or pay anything for anyone to represent them. Movant would never agree to give Progress Ohio control of her case. Allowing them to be a plaintiff was ancillary to her plan to bring the case *pro se*.

Ullmann agreed to appear in the litigation as attorney for Progress Ohio rather than a party, if it was understood that she would remain control the case, by being lead counsel throughout the case, including any and all briefing and oral argument before this Court. If the agreement she had with Progress Ohio did not work out for any reason, Ullmann would file an entry and return to her status as a party *pro se*. This was an absolute requirement. If Progress Ohio did not agree to those terms, they would not have been able to participate in this case at all.

This agreement between Ullmann and Progress Ohio is consistent with the concept of dual or common representation as set forth in 1.7 of the Rules of Conduct of the Bar. Since this

is a public interest case, there are absolutely no client confidences involved. Further, since Ullmann has control of the content of the case with Progress Ohio's agreement there are virtually no adverse interests between them on the actual merits of the case. Ullmann wants to win this case. If Progress Ohio no longer wants to win the case, they should dismiss themselves as a party if this court allows movant to reclaim her proper place in her case. The problems with the representation were caused by tortious interference with the contract by the 1851 Center and are in no way inherent in the common representation Ullmann designed.<sup>2</sup>

Ullmann never committed this agreement to writing, because she did not want Progress Ohio to feel like it was obligated to remain in the litigation. She wanted them out of it and to return to being a party if they became a liability. Ullmann reviewed this arrangement and obtained Progress Ohio's agreement verbally to each of these terms whenever a new complaint or appeal was filed prior to entering her appearance as counsel for them. At any of those points, it would have been appropriate to substitute Ullmann for Progress Ohio as a party if they no longer wanted to be involved. This agreement was renewed specifically with Progress Ohio in June of last year for filing of this appeal.

When Thompson filed an amicus brief in support of jurisdiction in this case this was followed by a very aggressive public appearance with Rothenberg. Both of them treated Ullmann like she was suddenly invisible and she suspected that improper arrangement had been made between them in violation of Rule of Conduct 4.2. Ullmann became concerned and addressed the issue this Rothenberg. Ullmann specifically told Rothenberg that under no circumstances is Thompson going to take over her case. Movant asked Rothenberg at that time

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<sup>2</sup> If Rothenberg concealed this agreement from the 1851 Center, that may constitute tortious misrepresentation.

if he understood that the agreement requires she remain lead counsel on the litigation at all times and present the oral argument before this court. He tried to waffle at that point and said Ullmann could represent Progress Ohio. Movant corrected him, reminded him that she was going to do this case without him and it was her case. Movant asked him again if he understood what the agreement was that she controlled the case. Rothenberg stated that he did.

The litigation group continued steadily after that despite the pressure of filing the intervener motion in *State ex rel. JobsOhio v. Goodman*, 2012 Ohio-1372. Movant is primarily responsible for that motion. Thompson did not intervene in *Goodman*.

***D. Thompson interfered in the contract between Ullmann and Progress Ohio and this threatens the integrity of this litigation.***

Immediately after this court accepted jurisdiction of the case, Thompson had announced to the press that he would be taking over the case, although he had not discussed this with Ullmann and was not permitted by the Rules of Conduct to discuss this with Rothenberg without Ullmann's permission. (See Exhibit 1) It can be inferred from these statements, that since June, 2012, Thompson was having a variety of improper contracts with Rothenberg focused on appropriating this case the moment this Court accepted jurisdiction. This violates Rule 4.2 of the Rules of Conduct of the Bar and affects the integrity of this appeal.

During a phone litigation meeting on January 26, Thompson again announced that he would be taking over this appeal. Ullmann informed Thompson that he was not taking over her case. When she attempted to address his role in this case with Thompson, he indicated he would be discussing this with Rothenberg not her, despite the fact she had told him not speak to her client.

Thompson had also announced to the press and on his web page that he was commandeering this case. He states he plans to use it as vehicle to promote his personal and organizational goal of expanding taxpayer standing. (Ex 1) Taxpayer standing has nothing to do with this case and it was never pled or argued. This case is a public interest standing case. Any attempt to add taxpayer standing as an issue at this time is completely improper.

At this point, Ullmann informed Progress Ohio that they were in breach of contract. If Rothenberg were intent on allowing Thompson to destroy the case, it was time for her to return to her status as a pro se appellant pursuant to the representation agreement. Ullmann informed Progress Ohio she expected Rothenberg to sign the entry agreeing to her becoming an appellant. They refused, again breaching the contract.

***E. Allowing movant to reclaim the case as a pro se appellant cures the breach of contract and protects the integrity of this litigation.***

Nothing in the Rules of Professional Conduct prevents Ullmann from reclaiming her party status. Since Progress Ohio was merely a titular plaintiff, and Ullmann the pivotal individual who fashioned this case and this appeal, nothing materially adverse will be presented when she returns to argue her case pro se. Rules of Professional Conduct 1.9. The only circumstance that this may occur is if Progress Ohio has decided they want to lose this case. If that is the case, they need to be dismissed as a party in favor of the movant. Although Progress Ohio is refusing to sign an entry allowing Ullmann to resume pro se status, they agreed to this as a precondition to representation. Further, Ullmann will be entering the litigation as a party, not

as an attorney for a stranger or as someone adverse to the litigation. Ullmann was the creator of this case and is the expert on it above all others in the entire state.<sup>3</sup>

No plaintiff/appellant is their right mind would give control of this case to the 1851 Center. They are hiding their position on the merits and may be directly opposed to the appellants on the merits. Thompson's maneuvers in this case and disregard of ethical conduct indicate that the 1851 Center should not be involved in this case. They merely want the litigation to use it for self promotion, or worse have entered the case as a subterfuge to destroy it. The integrity of litigation process in this extremely important case turns upon Ullmann remaining responsible for it.

Generally movant is expected to file their first pleading with the intervener motion. As this is an appeal, Ullmann asks that the court allow her to file her brief 40 days from the date the appellate record was filed with this court.

WHEREFORE Movant prays that this court allow her to enter the case as a party to fully brief and argue this case as a pro se litigant.

Respectfully submitted,



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<sup>3</sup> Dennis Murray is the expert on the bonding and credit aspects.

CERTIFICATE OF SERVICE

I here by certify that copy of the above motion was emailed to attorneys for the parties  
On date of filing.

A handwritten signature in black ink, appearing to read "Victoria E. Ullmann", written over a horizontal line.

Victoria E. Ullmann  
Attorney at law

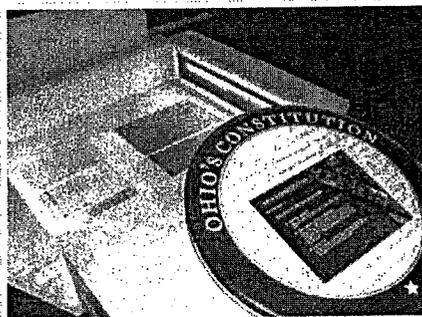
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## High Court Will Determine Ohioans Right to Challenge JobsOhio

JANUARY 24, 2013 BY ADMIN

### 1851 Center will argue that state taxpayers maintain standing to challenge the constitutionality of Corporate Welfare



Columbus, OH – The Supreme Court of Ohio on January 23 unanimously agreed to determine the extent to which Ohioans may take legal action to force state government to comply with constitutional spending, indebtedness, and corporate welfare constraints.

The 1851 Center for Constitutional Law will now spearhead the litigation, briefing and arguing the merits of the position that the Ohio Constitution demands broad access to the courts for taxpayers seeking to enforce

the Ohio Constitution's structural restraints on government. The Center had originally submitted to the Ohio Supreme Court a "friend of the court" brief asserting that Progress Ohio and other left-wing challengers must be found to have taxpayer and "public interest" standing to challenge the constitutionality of Governor Kasich's JobsOhio legislation.

The 1851 Center asserts that if Ohio's high court gives a pass to lower court rulings that Progress Ohio does not possess standing in this case, the Court will essentially bar all Ohioans from enforcing the Ohio Constitution's stringent spending, debt, and "anti-corporate-welfare" provisions, effectively rendering these provisions unenforceable.

The JobsOhio legislation sets up a special public-private corporation to invest public funds in select private corporations without transparency. The challengers contend (1) these features violate the Ohio Constitution's prohibitions on corporate welfare and state spending and indebtedness (contained in Articles 8 and 13); and (2) the General Assembly has unconstitutionally attempted to insulate JobsOhio from judicial scrutiny by including a provision that essentially prohibits any legal actions from being brought to challenge it.

Lower courts refused to consider these serious constitutional claims, flippantly concluding that Progress Ohio has no standing (the right to sue in Court) because it does not have a sufficiently "personal stake" in enforcement of the state constitution; and further because enforcement of the constitution's spending, debt, and corporate welfare limits are not a sufficiently important public interest to warrant an exemption from this personal stake requirement.

The 1851 Center's initial brief, which takes no position on the substantive issue -- the constitutionality of JobsOhio -- asserts the following:

- The Ohio Constitution demands that citizens and taxpayers maintain standing to enforce limits on tax, spending, and indebtedness legislation.
- The lower courts in this case erred in relying on federal standing cases, which are centered on Article III of the federal constitution, because the language of the Ohio Constitution

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#### Ohio Judges



Playlist The Invisible Ohio Constitution (3 videos)

Exhibit 1

deliberately rejects such barriers to standing in Ohio, and contains no jurisdictional prohibition on taxpayers and citizens bringing public interest actions.

- Enforcing well-defined constitutional limits on state spending, indebtedness, and governmental conferral of special corporate privilege is "of great importance and interest to the public."
- Ohioans' stake in enforcement of their constitution is sufficiently personal to maintain standing to enforce constitutional limits on state government's spending, indebtedness, and provision of special corporate privileges.
- If Ohioans are required to have a "personal stake" in such actions beyond their role as citizens and taxpayers, as the lower courts require in this case, then no Ohioan will have the capacity to enforce these general spending, debt and corporate welfare limits, and Courts will have rendered those provisions effectively unenforceable.

"While we may not agree with Progress Ohio's politics, we certainly believe that they, like all Ohioans, must have standing to defend the Ohio Constitution in court, if that document is to remain enforceable," said Maurice Thompson, Executive Director of the 1851 Center for Constitutional Law. "By requiring a 'personal stake' in a matter upon which all Ohioans are harmed relatively equally, such as state spending, indebtedness, and corporate welfare, Ohio courts are pulling the rug out from under these key constitutional limitations on government, and placing their own preference for abstaining from the hard work of enforcing the constitution above them. Such decisions cannot stand, if these important limits on government are to be enforceable going forward."

Continued Thompson, "The Ohio Supreme Court's decision in this case needs to acknowledge that when courts strip Ohioans' of the right to enforce constitutional limits on government in court, they essentially redact those constitutional limits through procedural artifice. Ohio judges should enforce, not redact, the Ohio Constitution"

Read the 1851 Center's initial Brief in this case [HERE](#).



- February 14, 2013:** WBNS-10TV: Kasich, Mandel At Odds Over Ohio Medicaid Future [VIDEO]
- February 5, 2013:** The Lima News: Editorial: JobsOhio delays irk Kasich
- February 3, 2013:** The Repository: Genesis of proposal doesn't bode well for coming debate
- January 31, 2013:** Columbus Dispatch: Kasich says critics will answer to God
- January 31, 2013:** Media Trackers Ohio: Governor Kasich Blasts Conservative, Liberal Foes of JobsOhio as "Nihilists"
- January 31, 2013:** Columbus Business First: Kasich: JobsOhio foes threaten 'wrecking' state's economy
- January 31, 2013:** Cincinnati.com: Kasich blasts supporters of JobsOhio lawsuit
- January 23, 2013:** Houston Chronicle: High court to decide group's right to sue JobsOhio
- January 23, 2013:** Columbus Dispatch: State justices to assess legality of JobsOhio suit

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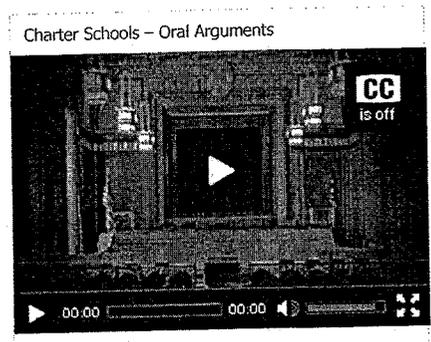
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