

IN THE SUPREME COURT OF OHIO

PROGRESSOHIO.ORG, INC., ET AL.)	Case No.: 2012-1272
)	
Plaintiffs,)	On Appeal From the Tenth District
)	Court of Appeals
v.)	
)	
JOBSONIO, ET AL)	
)	
Defendants.)	
)	

MOTION TO REQUIRE COUNSEL FOR THE 1851 CENTER TO FILE
 PROOF OF COMPLIANCE WITH RULES OF CONDUCT OF THE BAR
 REGARDING IMPROPER CONTACT WITH A REPRESENTED PARTY
 AND CONFLICT OF INTEREST OR WITHDRAW FROM THE CASE

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 CLERK OF COURT
 SUPREME COURT OF OHIO

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Movant requests that this court order amicus curiae, 1851 Center for Constitutional Law to file proof of compliance with Rule 1.7, 1.8 and 4.2 of the Rules of Professional Conduct prior to be allowed to represent any of the appellants before this court. Due to the nature of this case and the unethical and improper acts which have occurred surrounding of this litigation, this is necessary to preserve the integrity of the judicial process.

MEMORANDUM IN SUPPORT

Attorneys have a duty of candor towards this Court in Ohio and are obligated to report wrongdoing to the court that may affect the integrity of the litigation. The JobsOhio litigation had become convoluted and tarnished by improper actions by the defendants and now by an organization purporting to be an amicus. Ullmann was the creator of this litigation and is asking the court to preserve her position in it, which will also serve to protect the integrity of the court's processes. This motion is made pursuant to that goal.

A. Public threats by the governor against the attorneys in this litigation indicate that there are people in this state that will do anything to derail this litigation.

This case has been marked throughout its history with a manifest disrespect by the defendants of the separation of powers and the rule of law. The governor has resorted to threats and name calling to injure the plaintiffs and counsel throughout this action.

On January 31, 2013, Governor Kasich publically attacked all the attorneys in this case with a direct threat to introduce legislation to require a loser in a lawsuit to pay attorneys fees as revenge for bringing this action. In the video available on You Tube, the governor outlines his threat in great detail. ("Governor Unloads on JobsOhio," Capital Blog Channel, January 31, 2012) He specifically mentioned that it was due to this litigation. He threateningly stated he had not decided for sure to introduce it yet..... Murray, Skindell and movant all handle plaintiff's

representation and this is a direct threat to injure the actors in this case for pursuing this case.

These threats may violate R.C. 2905.12 which states:

A) No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following:...

(2) Utter or threaten any calumny against any person;

(5) Take, withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

Coercion is just a second degree misdemeanor, but these statements may also constitute a violation of 2921.45 which states: "No public servant, under color of his office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right." This is a first degree misdemeanor. If the threat to introduce legislation for revenge is determined to be unlawful, then these threats could constitute a violation R.C. 2921.05 which prohibits retaliation against attorneys for participating in a civil lawsuit. The governor is so intent on disrupting due process of law and has such little respect for separation of powers, he publically threatened three lawyers who have a case that this court has determined is a matter of great public interest and importance.

Given the statements and actions of the governor and his supporters, anything improper that can adversely effect the proper determination of this appeal is suspect and must be reported to this Court.

B. The actions of the 1851 Center in violation of 4.2 of the Rules of Conduct necessitate that this Court examine its involvement.

Since the 1851 Center entered this case, Maurice Thompson has been aggressively disrespectful of Ullmann and intent on usurping this case for his own benefit. When she first met him at a press conference regarding this litigation, he treated Ullmann as if she were invisible. After she was able to get his attention and remind him she was the attorney on this case, she gave him limited permission to speak to Brian Rothenberg of Progress Ohio.org on every day conversational matters and what press statements they wanted to make jointly. At no time did Ullmann authorize Thompson to speak privately with her client or allow him to usurp this case. All litigation matters were to go through Ullmann.¹

Ullmann does not know all the improper contacts occurred prior to the filing of the 1851 Center's amicus brief or otherwise. But Thompson announced on the center's web page on January 24, 2013 that he was taking over this case which is evidence of significant improper conversations occurring with Rothenberg prior to that date. (Ex. 1) At that time, Ullmann was lead counsel of record in this case. She had not withdrawn or otherwise allowed Thompson to make any such public statement.

Thompson continued to aggressively seize this case and had at least one meeting with Rothenberg after Ullmann told him not to speak with her client at all. These contacts also constituted actionable tortious interference with the contract between Ullmann and Progress Ohio as well as ethics violations. It does not matter whether Rothenberg initiated the contact or Thompson did.

B. Thompson is attempting to add issues on appeal that were not litigated below.

Thompson also announced on this web page that he was going to change the issues in this appeal. (Ex. 1) He announced he was going to turn this into a taxpayer standing case. He

¹ As specifically explained in the Motion to Intervene, Rothenberg had agreed that Ullmann would remain lead counsel throughout this case or sign an entry with the court agreeing for her to claim the status of a party in the action.

stated this to Ullmann repeatedly.² Ullmann told him that the issue is not appropriate for the JobsOhio statute and she waived this issue on the record throughout this litigation. This case involves great public interest standing and other related issues. There is no basis for any claim of taxpayer standing in this matter. An amicus brief does not change the appellate issues. Attempting to raise this issue now is frivolous and violates the most basic rules of appellate practice. Thompson would not stand down on this and the Progress Ohio refused to accept Ullmann's advice not to participate in improper actions before this court. Of course this was due to Thompson's unethical interference. This led to Ullmann's request to resume her role as party in the litigation.

C. Thompson is being paid by an organization with positions that are diametrically opposed to the general views of every appellant and movant.

The 1851 Center has overwhelming conflicts of interest that should prevent them from ever representing Progress Ohio in this or any litigation. This triggers the need for scrutiny by this court pursuant to Rule of Conduct 1.7 and 1.8.

The 1851 Center is a non profit PAC type entity that obtains funding from other shadowy right wing PAC's with no public accountability.³ This group holds the exact opposite view on almost every issue than Progress Ohio, and Rothenberg has publically acknowledged this on many occasions. It is also movant's understanding that Thompson does fundraising for this group. Thompson is being paid by the 1851 Center, which is his corporate client, for any work he does on this litigation. He is barred from representing any appellant in this case or acting as lead counsel in this case unless he complies with Rule of Conduct 1.7 and 1.8 (f)

² He had argued this in his amicus brief which needs to have little relationship to the case as presented by the actual parties.

³ Progress Ohio is a 501c3 nonprofit, but the appellant here is Progress Ohio.org which is a PAC type entity as well that can receive money surreptitiously.

(f) A lawyer shall not accept compensation for representing a client from someone other than the client unless divisions (f)(1) to (3) and, if applicable, division (f)(4) apply:

(1) the client gives *informed consent*;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;

(3) information relating to representation of a client is protected as required by Rule 1.6;

(4) if the lawyer is compensated by an insurer to represent an insured, the lawyer delivers a copy of the following Statement of Insured Client's Rights to the client in person at the first meeting or by mail within ten days after the lawyer receives notice of retention by the insurer:

Maurice Thompson is the director of a nonprofit corporation as well as its lawyer. He has to answer to his board of directors and has only limited ability for independent action. Not only is he being paid by someone else to do the work in this case, he is being paid by his employer and client, as well as potentially adverse donors. There is simply no way that he can exercise independent professional judgment on behalf of any appellant in this case.

Statements made by Thompson and his group indicate that the conflict is so severe it could not be waived. Thompson refuses to state his position on the constitutionality of JobsOhio and conceals his position on the merits. (Ex 1) This refusal is most likely due to the fact that he does not support the merits of this case which creates an obvious conflict. Rules of Conduct 1.7 (a)(1)(2).

To be effective under Rule 1.8 in this situation, informed consent is contingent on full disclosure of all donors to the 1851 Center and correspondence between those donors and anyone in the 1851 Center regarding this litigation. Many powerful individuals and organizations to the right of the political spectrum want this case to vanish. Thompson may well be funded by one of his right wing donors with the specific goal of making it disappear.

His appearance here is fraught with improper motive and action. So far he has deprived the appellants of an attorney that was so dedicated to the case that she was initially going to undertake the case pro se. In exchange for Ullmann, the creator and expert on this case, they get Thompson who has a gross conflict of interest.

The governor has publically stated that he is determined to take revenge on the people involved in this case to try to disrupt the litigation. Thompson's actions here may be part of a coordinated action by the governor's allies to derail the case. Thompson may just be acting improperly for limited benefit for his nonprofit as well. Either situation damages the integrity of this litigation and needs to be addressed.

WHEREFORE, movant moves make all appropriate orders here. Ullmann requests the court allow her to file a separate brief and allow her a separate 15 minute oral argument in this case is Thompson is allowed to remain on this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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



Victoria E. Ullmann
Attorney at law

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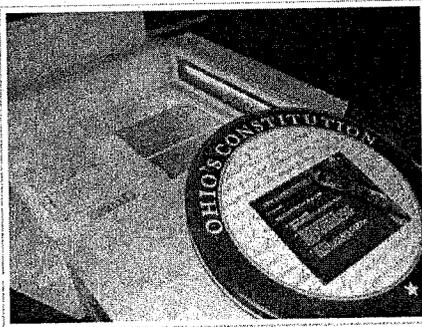
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High Court Will Determine Ohioans Right to Challenge JobsOhio

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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Case Suggestions

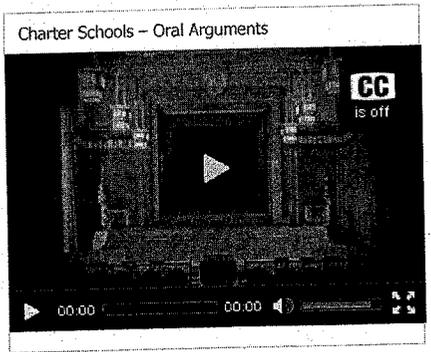
Let us know if the 1851 Center should be involved in a case.

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