

**IN THE SUPREME COURT OF OHIO**

State of Ohio *ex rel.*  
Woodrow L. Fox, *et al.*,

Relators,

v.

Gary Walters  
Clerk of Court for the Court of Common  
Pleas, Licking County, Ohio, *et al.*,

Respondents.

Case No. 2013-0364

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**RELATOR'S MOTION TO CONSOLIDATE**

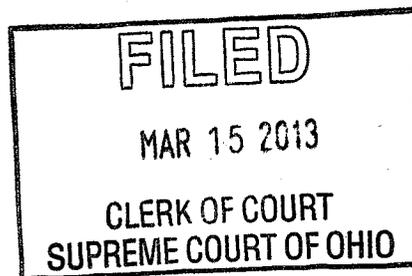
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Counsel for Respondents.



## MOTION TO CONSOLIDATE

Pursuant to S. Ct. Prac. R. 14(C)(2) and Ohio R. Civ. P. 42(a), Relators, through counsel, move the Court to consolidate this action with the case entitled *State ex rel. Anthony Sylvester, et al. v. Neal*, and assigned case number 2012-1742 which was filed on October 15, 2012 and is pending before the Court. Both cases involve a common question of law and similar types of parties.

Under Ohio R. Civ. P. 42(A), it is proper for a court to consolidate pending actions if there are common questions of law or fact between the actions or if the parties are substantially the same. See *Dir. of Highways v. Kleines*, 38 Ohio St.2d 317, 313 N.E.2d 370 (1974); *Miller v. Beard*, 73 Ohio Law Abs.10, 136 N.E. 2d 366 (2<sup>nd</sup> Dist.1955). The purpose in doing so is to save unnecessary costs and delay. See *Id.*; *Cantrell, et al. v. Celotex Corp.* 999 F.2d 1007 (6<sup>th</sup> Cir.1993).

The *Fox* case should not be put on hold, but instead it should be consolidated with *Sylvester* for three reasons. First, both cases seek to resolve the same issue: whether a criminal defendant has the legal right to post a surety bond to secure his release from jail if an order of bail is issued under Crim. R. 46.

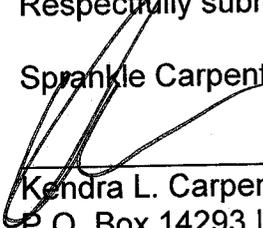
Second, while both cases were brought against a clerk of court, the *Fox* case also included the common pleas judges as respondents. This is relevant, because the Respondents in both *Fox and Sylvester* argue that a county clerk is under no clear duty to act because a clerk takes direction from a judge. Consolidating *Fox and Sylvester* provides the Court with the opportunity to resolve the same legal issue with respect to both clerks of court and judges, thereby lessening the specific risks of inconsistent adjudication and waste of judicial resources.

Finally, *Sylvester* was just filed in October and the parties have not completed the briefing process. Though it is yet unknown if the Court will issue an alternative writ in *Fox*, the most prudent decision is to first consolidate these cases, as the risk of inconsistent adjudication far outweighs any prejudice to *Sylvester* that may arise from a scheduling delay. Accordingly, on all accounts, consolidating *Fox* and *Sylvester* is the most reasonable solution.

WHEREFORE, Relators move that this case be consolidated with *State ex rel. Anthony Sylvester, et al. v. Neal*, case number 2012-1742, and not be put on hold pending the outcome of *Sylvester*.

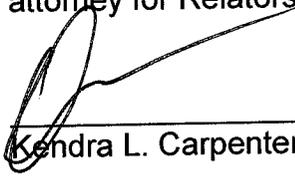
Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on March 15, 2013, I sent RELATOR'S MOTION TO CONSOLIDATE to Kenneth W. Oswald, attorney for Relators, via email at koswalt@lcounty.com.

  
Kendra L. Carpenter (0074219)