

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.)	
)	
JOBSOHIO, ET AL)	
)	
Defendants.)	
)	

**MERIT BRIEF OF VICTORIA E. ULLMANN
INTERVENOR/APPELLANT/AMICUS CURIAE
IN SUPPORT OF APPELLANTS REGARDING PUBLIC INTEREST
STANDING AND A LEGISLATIVE GRANT OF STANDING**

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STATEMENT OF FACTS AND OF THE CASE

This case is on appeal from a complaint for declaratory judgment and permanent injunction challenging the constitutionality of legislation designed to create JobsOhio, a private corporation in violation of Ohio Const. Article 13 and straddle the state with massive debt in violation of Ohio Const. Article 8.

This suit challenges the constitutionality of R.C. 187.01 et seq. also referred to as the JobsOhio Act and R.C. 4313.01 et seq. the enterprise acquisition act. Prior to the passage of R.C. 4313, Appellants and intervener challenged R.C. 187 its entirety by bringing an action in this Court pursuant to requirements set forth in it. R.C. 187.09 commanded the Supreme Court accept original jurisdiction of any action challenging the constitutionality of the JobsOhio within 90 days of its effective date. That portion of the bill was stuck down by this court as a violation of separation of powers. *ProgressOhio.org v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101 (August 19, 2011, hereafter "*Progress Ohio I*"). Subsequent to the plaintiffs' challenge before this Court, some unconstitutional sections of the legislation were altered in Ohio's biennial budget, H.B. 153.

Despite all the obvious problems with this entire concept, the governor filed the papers to create JobsOhio with the Secretary of State and named a board of directors. It has received funding from the state and is operating and expending funds. JobsOhio now controls the valuable liquor business that was an asset that generated revenue for the state. Now those funds are encumbered with over a billion dollars in bonds to provide immediate funds for JobsOhio.

After this Court dismissed the first case, appellants filed a complaint for declaratory judgment and an injunction in the Franklin County Court of Common Pleas. The defendants challenged the plaintiffs' right to bring this suit on grounds that they lacked standing under the public interest standing rules and they further argued that R.C. 187.09 does not grant the plaintiffs' standing.

This Court has consistently held that challenges to new legislation are to be brought as declaratory judgments in common pleas court. *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 1999-Ohio-130; *ProgressOhio I, Id.* Despite the fact that that holding constitutes law of the case in this litigation, the declaratory judgment action became mired in standing issues below. At the common pleas level, the judge determined that public rights standing can only be found in actions for extraordinary writs. This was based upon a line of cases in the Tenth District that misinterpreted this court's decision in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 1999 Ohio 123.

The Tenth District corrected this long standing misinterpretation and held that public rights standing is not limited to extraordinary writ cases. However, it refused to grant standing to appellants finding that public interest standing is only to be used for what is essentially a class action regarding the actions of government which effect important constitutional rights of individuals.

Intervener/amicus, then counsel of record for appellant Progress Ohio, filed a memorandum in support of jurisdiction asking this Court to clarify that the doctrine of public interest standing applies not only when individual's rights are affected, but also

when the legislation in question is facially unconstitutional and causes the state itself to function unconstitutionally in a broadly systemic way.

After the Tenth District decision, JobsOhio and the Kasich administration realized that stymying this case in a morass of standing issues was actually hurting them. In order to move the case to the merits, they filed *State ex rel. JobsOhio v. Goodman*, 2012--1356 as a mandamus action before this Court. In order to impress upon the court the importance of *Goodman*, JobsOhio, lined up a number of impressive amici to support them. Amicus briefs were filed by the Ohio Bankers League, Columbus Partnership, Ohio Chamber of Commerce, Ohio Council of Retail Merchants and the Ohio Manufacturers Association. JobsOhio was able to obtain cooperation from these entities with impressive speed and efficiency. These organizations represent a large segment of the Ohio business community. This Court dismissed that case since it was in fact a declaratory judgment action just as this one is. However, the amici that appeared in that case are probative of the great public interest of this case and supports intervener's argument that she and the other appellants have always had standing to bring this action.

After *Goodman*, while this case was awaiting this Court's decision regarding jurisdiction, the state and JobsOhio began to take significant action in furtherance of the unconstitutional scheme.¹ The state of Ohio has leased its entire liquor wholesale business to the private entity JobsOhio and its separate but subsidiary entity, JobsOhio Beverage Systems. Jobs Ohio/and the JobsOhio Beverage System will control the

¹ Intervener requested the court take judicial notice of the facts that follow here. Only Jobs Ohio objected and they only objected to the limited extent of whether the liquor business remains a state asset or is a lease.

operations and profits of the wholesale liquor business which is a state asset.² JobsOhio, in cooperation with the state of Ohio, then issued \$1.5 billion dollars in bonds and now must pay this significant debt from the profits from the wholesale liquor business.

When JobsOhio issued its required yearly audit, it redacted significant amounts of information. JobsOhio then refused to allow Auditor David Yost to audit its books arguing that it was a completely private entity. Auditor Yost, an attorney and long time prosecutor, stated that in his opinion the liquor profits constitute public funds since they are derived from the wholesale liquor business which is a state asset. A government crisis was averted when Jobs Ohio released the documents, but they said they were not required to do so since they are a private entity.

Now that JobsOhio controls the state liquor business, it is trying to avoid its obligation to account for the use of this state asset. The Department of Development provided JobsOhio with \$6.5 million dollars in grants during 2012. JobsOhio has now announced it will return all state funds to avoid any state audits or other public access to its records. But it is not returning the state liquor business it now controls.

In response to the auditor's arguments, JobsOhio claimed its importance to the economy should insulate it from state scrutiny. JobsOhio president John Minor warned that Yost could "scare off new job creators and cripple economic development in our state." Rob Nichols, a spokesman for Kasich, said Yost's efforts "will kill JobsOhio" and the legislature "must act quickly to prevent a chilling effect on job creation caused by a mistaken, overly-intrusive interpretation of the auditor's duties."

² JobsOhio argues that the liquor business is no longer at state asset and is not a lease based upon R.C. 4313. But R.C. 4313(D) specifically refers to JobsOhio's interest as a lease: "Transfer" means an assignment and sale, conveyance, granting of a franchise, lease, or transfer of all or an interest."

In 2012, American Electric Power gave a donation to JobsOhio Beverage System of \$2,000,000. This was only made public when AEP indicated it had made the donation in its SEC filings. Other donors remain secret and are likely to remain so.

AGRUMENT

Proposition of Law 1: Plaintiffs/appellants and intervener all have standing to bring this action.

This Court explained in *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, that “[i]t has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect.” Accordingly, “[i]t has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies.” *Id.* at 14. But this rule has never been absolute, and the public has a variety of means of redress for major unconstitutional problems like Jobs Ohio.

A. R.C. 187.09 assumes and/ or grants public interest standing to bring an action challenging the constitutionality of JobsOhio.

R.C. 187.09 sets forth the procedures for bringing constitutional challenges regarding JobsOhio:

(B) Except as provided in division (D) of this section, any claim asserting that any one or more sections of the Revised Code amended or enacted by H.B. 1 of the 129th general assembly, any section of Chapter 4313. of the Revised Code enacted by H.B. 153 of the 129th general assembly, or any portion of one or more of those sections, 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. Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

This section obviously contemplated an immediate public interest lawsuit by citizen or legislator plaintiffs. If the arcane standing and ripeness arguments presented by the defendants were valid, and they are not, then that renders this entire section unconstitutional since the 90 day limitations period would violate the open court provision of the Ohio Constitution which requires the courts to be open to provide redress. O Const. 1.16. This highly truncated statute of limitations period violates the constitution on its face, but there is no doubt of its unconstitutionality if the defendants' concepts of standing and ripeness are incorporated into that provision. But the case law in Ohio does not in any way support denial of standing to the plaintiffs in this cause.

As the United States Supreme Court has recognized, standing may be conferred by a specific statutory grant of authority:

Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends on whether the party has alleged * * * a 'personal stake in the outcome of the controversy' [citation omitted] * * *. Where, however, * * * [a legislative authority] has * * * provided by statute for judicial review * * *, the inquiry as to standing must begin with a determination of whether the statute in question authorizes review at the behest of the plaintiff." *Sierra Club v. Morton* (1972), 405 U.S. 727, 731-732, 92 S.Ct. 1361, 1364, 31 L.Ed.2d 636. *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 75-76

R.C. 187.09 (B) confers standing for public interest suits to challenge this act and to determine its constitutionality as soon as possible after passage. This provides a legislative grant of standing to bring a suit of this type. Any actual injury requirements are dispensed with by the language of this section and the 90 day statute of limitations on constitutional challenges.

JobsOhio's constitutionality was challenged by intervener/amicus, who appeared as a witness before the Senate Finance Committee. Murray and Skindell spoke out against the legislation throughout the process. Since many lawyers believed there was a problem with the legislation, a section encouraging prompt resolution of the constitutional issues with this litigation makes complete sense in this situation. The drafters of the bill wanted early resolution.

This uncertainty has led to a crisis in government since the powers of the auditor to account for the funds given to JobsOhio are complicated by the fact that the constitutionality of the entity and the bonding scheme are in issue and yet unresolved. Many in government and the public believe resolution of this matter is vital.

B. This court recognizes a variety of circumstances in which public interest standing exists.

Ohio has long recognized an exception to the direct injury requirement for standing in matters of great public interest and importance. There is virtually no controversy at this point that this sort of litigation is allowed in Ohio. The only issue here is what constitutes a great public interest to trigger this public right. Black's Law Dictionary (6th Edition) defines public interest as :

Something in which the public, the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national Government.

This definition recognizes three different aspects of public interest. The first affects the public as individuals who pay taxes or receive a benefit, the second involves

an interest in individual rights and liabilities and the third affects the conduct of government in general. The Tenth District limited great public interest only to the first and second segments of the definition.³ Intervener has argued consistently in this case that this Court recognizes public interest standing based upon all three parts of this definition. Pivotal here is the right to challenge the unconstitutional actions of the government that affect the conduct of governing on a large scale and the population of citizens as a whole.

This Court also has recognized that public interest standing is permitted in a broader range of cases than acknowledged by the Tenth District. In *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3rd 451, 469-470, 1999 Ohio 123, this Court held that “[w]here the object of an action ...is to procure the enforcement or protection of a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that the relator is an Ohio citizen and, as such, interested in the execution of the laws of this state.” *Id.* at paragraph one of the syllabus. Recently this Court reiterated that “there are serious objections against allowing mere interlopers to meddle with the affairs of the state, and it is not usually allowed *unless under circumstances when the public injury by its refusal will be serious.*” (Emphasis added.)” *State ex rel. Teamsters Local Union No. 436 v. Cuyahoga Cty. Bd. of Commrs.*, 132 Ohio St.3d 47, 2012-Ohio-1861 citing *State ex rel. Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d at 472, 715 N.E.2d 1062, quoting *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 616, 64 N.E. 558 (1902), quoting *People ex rel. Ayres*

³ Ohio law on taxpayer standing requires relator be taxed for specific purpose and make payment into a specific fund that is the issue in the litigation in order for the relator to have standing. That does not exist here. JobsOhio has been funded by general revenue funds. It is now being funded by liquor profits that

v. Bd. of State Auds., 42 Mich. 422, 429, 4 N.W. 274 (1888). Accordingly, only “when the issues sought to be litigated are of great importance and interest to the public [may they] be resolved in a form of action that involves no rights or obligations peculiar to named parties.” *Sheward* at 471. Standing nonetheless is a self-imposed judicial rule of restraint, and courts “are free to dispense with the requirement for injury where the public interest so demands.” *Id.*

One of many methods for determining whether public interest standing is available regarding a broad governmental action is to determine whether amending the constitution is actually needed for the governmental action in question. Ohio Const. Article 16.01 requires any amendment to the constitution to be submitted for the approval of the electorate. If the statute in question cannot legally exist without a significant amendment to the constitution, that should satisfy the requirement for great public interest standing. The electorate is being deprived of its constitutional right to the referendum process that is needed to for any amendment. That deprivation would create public interest standing.

The Ohio Constitution would have to be amended by a vote of the electorate for JobsOhio to be constitutional. There is no way to salvage it in its current form or amend R.C. 187.01 or R.C. 4313.01 to allow JobsOhio to exist. Similarly, transfers of the liquor business and issuance of the liquor bonds on this state asset can only be accomplished after a vote of the electorate since acquisition of debt in Ohio is a constitutional issue.

are not a tax, as well as private donations. See *State ex rel Dann v. Taft* (2006) 110 Ohio St. 3d 10, 2006-Ohio-2947

C. Government support of private corporations and debt were the two primary issues that led to the 1851 Constitutional Convention and these issues are cornerstones of the document.

The 1851 Constitutional Convention was convened due in a large part to the very concerns that are being litigated here. The state's ability to create and support private corporations was a pivotal concern in drafting the 1851 Constitution. Concerns about debt were also a focus of the debate and the document itself. At the time of its ratification, the state's power with regard to corporate creation and debt were some of the issues of the greatest public importance of the day.

1. In order for JobsOhio to exist, the Article XIII of the Ohio Constitution, which forbids the General Assembly from passing any act conferring corporate powers, would have to be entirely eliminated from the Ohio Constitution by referendum.

In the 1830 and 1840's, the Ohio state government became entangled with a number of private corporations in joint venture type agreements that resulted in huge financial losses to state government and the transfer of private debt obligations to the taxpayers. Public outcry led to a constitutional convention. In 1851, Ohio amended its constitution to include prohibitions that prevent the state from this sort of entanglement. JobsOhio is just such an unconstitutional arrangement.

The legislature had also become heavily involved in the subsidization of private companies and the granting of special privileges in corporate charters. As the Ohio Supreme Court noted in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 1999 Ohio 123:

“The General Assembly passed a number of Acts, most notably the Loan Law of 1837, 35 Ohio Laws 76, which became known as the “Plunder Law,” designed to loan credit or give financial aid to private canal, bridge, turnpike, and railroad companies. Between 1825 and 1830, the total state debt increased nearly elevenfold and more than doubled again by 1840. The public began to bemoan the taxes imposed on them for the benefit of private companies and the losses incurred by the state when subsidized corporations failed.”

Formation and powers of corporate entities were one of the primary foci of the 1851 convention. This resulted in a constitution for Ohio that is very different than other states and it remains so to this day even with some amendments.

A committee was formed by the convention to draft the new corporate powers language and many days were spent in argument by the convention as a whole regarding corporate powers and the relationship of state government with these entities. *Id.* In the early 1800’s canals, railroads and turnpike companies and received specific charters and franchises from the legislature which resulted in misuse of eminent domain powers as well as financial abuse. *See Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio (1851) 351. Debates, December 26 pp. 176-8.* As the Supreme Court discussed in *Sheward, Id.*:

Accordingly, one delegate to the Constitutional Convention of 1851 remarked:

“It is well known that special charters are always ‘got through’ our Legislature at will, and it must be evident that it always will be so, in the absence of a constitutional prohibition. When was there ever an instance within the recollection of the oldest legislator on this floor, where a single special act of incorporation was defeated — ***Any association of capitalists, who ask for a right of way, through any part of the country, will always get it, and ten thousand remonstrances might be sent up in vain.” *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio (1851) 351. At 53*

Corporations would sometimes receive these grants of special corporate powers, acquire debt, and then petition a later General Assembly to dissolve their charter which

required that the incorporator be paid for the charter since it was considered to be a form of property. Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio (1851) Saturday, Dec. 28. Eliminating the grants of this sort of special corporate powers, and requiring all corporations to be subject equally to the general law, was a foundational issue in the 1851 Constitution. *See* Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio (1851) p. 174,, 184-6.

This court addressed the corporate powers issue not long after the Constitutional Convention. In *Atkinson v. Marietta & C.R. Co.*, 15 Ohio St. 21 (1864), the Court held that an act giving effect to the sale of a railroad company and authorizing its purchasers to reorganize, create new stock, and elect another board of directors was unconstitutional. Subsequently, the Court confirmed that, in all cases, "[t]he general assembly cannot, by a special act, create a corporation." *State ex rel. Atty. Gen. v. Cincinnati*, 20 Ohio St. 18, 36 (1870). In *The State of Ohio ex rel. John Drake v. James M. Roosa, et al.* 11 Ohio St. 16; 1860, this Court was asked to determine whether Article 13.01 was retroactive with respect to the charter of a railroad company by the General Assembly. This charter is referred to as a special act throughout this case. In *State ex rel. Attorney General v. City of Cincinnati*, (1872) 23 Ohio St. 445; 1872 Ohio LEXIS 132 this Court determined that any grant of corporate powers by the legislature is forbidden:

Nor does it make any difference, within the meaning of the constitutional inhibition, whether the effect of the special act is to confer additional corporate power on an existing corporation or to create a new one. The power is explicitly denied to the legislature of accomplishing such a result by special act.

The Court has interpreted Ohio Const. 13.01 as applying to "such powers as are usually conferred upon corporations." *State ex rel. Knisely v. Jones*, 66 Ohio St. 453, 488, 64 N.E. 424 (1902). In *Knisely*, this Court held that an act providing for the organization and support of a police force for the city of Toledo, to be funded by a tax levied on all taxable property within the city, conferred corporate powers in contravention of Ohio Const. 13.01. *Id. Cincinnati v. Trustees of Cincinnati Hosp.*, 66 Ohio St. 440, 64 N.E. 420 (1902), concerned the power of a hospital board of trustees to issue bonds to raise funds required for a contemplated hospital extension and to levy a tax on all taxable city property for the bonds' redemption. This court determined that this law conferred corporate powers by special act in violation of Ohio Const. 13.01.

All of these chartered and created companies were supported in the early 1800's because they were considered necessary for economic development in Ohio. The railroad and canal builders were needed to provide infrastructure for the young state. Despite the vital function these companies were expected to perform, the convention wholly rejected this method of supporting economic development. JobsOhio is just as secretive and prone to corruption as these early canal and railroad companies. At least in the 1840's state government and the citizens could actually see if a canal was being built or not. The grants JobsOhio will fund will be largely invisible to the public. JobsOhio wants their actions to be secret from the auditor as well. We any never know if JobsOhio does anything at all to support economic development in this state. JobsOhio represents just exactly the evil Ohio Const. 13 was designed to prevent.

JobsOhio is not formed under the general laws of Ohio and violates Ohio Constitution 13.02 also. R.C. 187.01 et seq. R.C. 187.03 also exempts JobsOhio from

most of the laws controlling corporate formation and governance found in Chapter 1701 et seq. R.C. 187.03 takes the extraordinary step of exempting JobsOhio from general laws governing corporations.⁴ JobsOhio is expressly not being formed or governed by the general laws of Ohio and therefore violated Ohio Const. 13.02.

This statute creates the nonprofit corporation JobsOhio. R.C. 187.01. It authorizes the existence of the corporation and includes statutory requirements setting forth everything from the name the organization to its structure and the qualifications of its board of directors. R.C. 187.01 et seq. R.C. 187.01 and R.C. 4313 grant JobsOhio and the JobsOhio Beverage System the corporate power of taking and holding an exclusive property interest in the state liquor business and grants a lease or franchise in a state asset. It further grants JobsOhio the corporate power of issuing bonds that will fall back upon the state should JobsOhio be dissolved. JobsOhio, in cooperation with the state of Ohio, has sold a massive \$1.5 billion dollar bond issue creating a debt that is so large that it would be incomprehensible to the delegates of the 1851 Convention. R.C. 187 is the equivalent to the charters and franchises of the 1800 and as such is a special act conferring corporate power prohibited by O Constit.13.01.. It's the Plunder Law all over again.

JobsOhio cannot exist without completely eliminating Ohio Const. Article 13. Since only the electorate can approve this change, JobsOhio's constitutionality is an issue of great public interest and importance. Intervener is a citizen who is entitled to vote on

⁴ O.R.C. Sec. 187.03 (A), "JobsOhio and its board of directors are not subject to the following sections of Chapter 1702 of the Revised Code: sections 1702.03, 1702.08, 1702.09, 1702.21, 1702, 24, 1702.26, 1702.27, 1702.28, 1702.29, 1702.301, 1702.33, 1702.34, 1702.37, 1702.38, 1702.40 to 1702.52, 1702.521, 1702.54, 1702.57, 1702.58, 1702.59,1702.60, 1702.80, and 1702.99".

a constitutional change of this magnitude. Since she is being deprived of the right, she can resort to litigation to protect her interest. The same can be said of all the appellants in this action.

2. The Ohio Constitution restricts the state's ability accrue debt and unless the liquor bonds fall into the special funds exception, this bond issue is unconstitutional without a constitutional referendum.

Any proposed bond issuance that would create a debt of the state exceeding \$750,000 is prohibited by Sections 1 and 3 of Article VIII, unless it complies with the "special fund" exception created by decisions of this Court. See *Kasch v. Miller* (1922), 104 Ohio St. 281, 135 N.E. 813; *State, ex rel. Pub. Institutional Bldg. Auth., v. Griffith* (1939), 135 Ohio St. 604, 14 O.O. 533, 22 N.E. 2d 200; *State, ex rel. Bridge Comm. of Ohio, v. Griffith* (1940), 136 Ohio St. 334, 16 O.O. 467, 25 N.E. 2d 847; and *State, ex rel. Allen, v. Ferguson* (1951), 155 Ohio St. 26, 44 O.O. 63, 97 N.E. 2d 660. The special fund exception applies if the debt is accrued in order to create an income producing project that allows the debt to be paid from the profits made from the project. For instance, the dam in *Kasch*, produced electricity that could be sold to pay back the debt, *Id.*

If a bond issue fails to meet the special funds exception, the constitution requires it be submitted to the electorate. Ohio Const. 8.01 et seq. contains seventeen sections that are in the constitution only because the electorate approved them. Fourteen of these section deal with specific bond issues.

The liquor bonds issued for JobsOhio are not going to be used to build something new that will produce income to pay for itself. R.C. 4313 simply gives an existing state

asset to a private company to use in a leveraged buyout type scheme to obtain immediate cash in exchange for long term debt with a state asset as security. This set up does not fall into the limited special funds exception. The General Assembly was required to submit this bonding scheme to the electorate. Since they did not, any citizen has a right to challenge this denial through public interest litigation.

3. JobsOhio and the enterprise acquisition act create an entanglement between the state and private enterprise which is unconstitutional without a voter approved constitutional amendment.

The Ohio Constitution has long prohibited state involvement and entanglement with private enterprise. *Grendell v. Ohio Environmental Protection Agency*, (Ohio App. 9 Dist. 2001) 146 Ohio App.3d 1, 8. Ohio Const. Art. 8.04 states: “The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company...” “In general, Ohio Const. 8.01 et seq. has been said to be an expression of concern with placing public tax dollars at risk to aid private enterprise.” citing *State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow* (1991), 62 Ohio St.3d 111, 114, 579 N.E.2d 705; *Walker v. Cincinnati* (1871), 21 Ohio St. 14, 53-56.

Ohio Const. 8.01 et seq. forbids any joint ventures between private companies and the state of Ohio. Voter-approved constitutional amendments have allowed the state to become more involved with promotion of private sector economic development. But none of those changes allows the state to privatize this quintessentially government function, which had been handled by the Department of Development for 50 years, by

creating a private corporation to be run secretly by the governor and corporate profiteers operating outside of ethical and governmental controls and restraints. By giving long term control of the state liquor business to Jobs Ohio and allowing it to issue bonds on this state asset, a joint venture has been created between the state and JobsOhio. Since the voters did not approve this measure, intervener and appellants have standing to challenge it.

CONCLUSION

The JobsOhio statutory scheme is so facially unconstitutional that there is no legal means of salvaging this program without significant amendment to the Ohio Constitution. Only the electorate can amend the constitution to allow for this radical change in the state's method of supporting economic development. Because the General Assembly and the governor are attempting to circumvent the electorate, Ullmann and appellants have standing to protect this important issue by bringing this action. Therefore, this Court should determine that public interest standing encompasses this litigation to challenge creation of the JobsOhio entity and the massive debt to fund it. This matter needs to be determined as soon as possible due to the series of crises JobsOhio is precipitating within state government.



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I certify that a copy of this brief was sent by e mail on date of filing to the following:

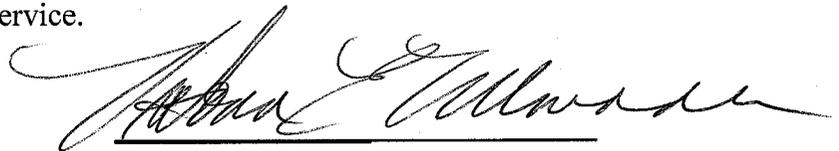
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