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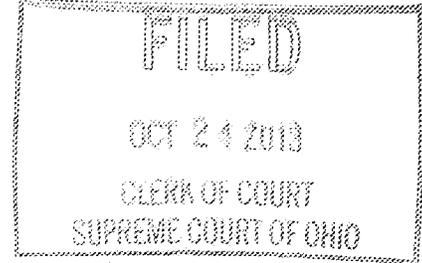
IN THE SUPREME COURT OF OHIO

STATE ex rel. CLEVELAND RIGHT TO LIFE, INC., et al., : Case No. 13-1668

Relators : ORIGINAL ACTION IN : MANDAMUS AND : PROHIBITION

v. STATE OF OHIO CONTROLLING BOARD, et al.,

Respondents.



RELATORS' MOTION TO EXPEDITE WRIT OF MANDAMUS

Pursuant to Ohio Supreme Court Rule XIV, Section 4(c), Relators State Representatives Maag, Hood, Young, Becker, Lynch, and Thompson and Cleveland Right to Life and Right to Life of Greater Cincinnati ("Relators") respectively move this Honorable Court for an Order expediting consideration of their petition for a Writ of Mandamus and Prohibition against the Ohio Controlling Board and Ohio Department of Medicaid.

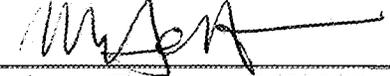
More specifically, Relators respectfully request that this Court set this Petition for a Writ of Mandamus on a calendar substantially identical to elections matters calendared pursuant to Ohio Supreme Court Rule X, Section 9, as it has historically done in cases of substantial public importance and immediacy. See *State ex rel. Seth Morgan v. Governor Ted Strickland*, 2009-Ohio-0614, April 4, 2009 granting of Motion to Expedite;¹ *Ohio Christian Alliance, et al. v. Strickland*, Case No. 2009-Ohio-1648, September 22, 2009 granting of Motion to Expedite.

Such expedition is warranted so as to facilitate the State of Ohio's finalization of its Medicaid program prior to the looming January 1, 2014 deadline, and is both necessary and

¹ available at <http://www.sconet.state.oh.us/Clerk/ecms/resultsbycasenumber.asp?type=3&year=2009&number=614&myPage=searchbycasenumber%2Easp>

appropriate for the reasons articulated in the supporting memorandum below, including but not limited to critical constitutional and state budgetary issues.

Respectfully submitted,

/s/ 

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MEMORANDUM IN SUPPORT

This Honorable Court should set this case on a calendar that facilitates, prior to the looming January 1, 2013 deadline that has the capacity to bind Ohio to cover an expanded Medicaid population without a General Assembly appropriation or otherwise lawful funding, a determination as to the very future of the state's Medicaid system - - the largest line item in the state biennium budget.

A. Relators' Verified Complaint articulates a likely meritorious claim.

Despite over seven months of continuing *legislative* deliberation on the matter, the State of Ohio Controlling Board, on October 21, 2013, authorized appropriation of the very federal funding for Affordable Care Act Medicaid expansion that the Ohio General Assembly (1) removed from the budget; (2) prohibited the appropriation of (in the same budget bill); and (3) continued to vigorously debate. On October 22, Relators filed this action in Mandamus and Prohibition to void the effect of that sweeping administrative action, asserting that the Controlling Board acted beyond its jurisdiction and other legal authority by disregarding the clear intent of the General Assembly. See Relators' October 21, 2013 Complaint, Paragraphs 62-90.

The plain language of R.C. 127.17 requires this Court to ascertain the intentions of the *General Assembly alone*, without reference to the intention of the executive branch, and thus, without reference to the Governor's line-item veto of the legislative acts in question. The Controlling Board's October 21, 2013 authorization and/or appropriation of funding for ACA Medicaid expansion violates the clear intent of the Ohio General Assembly as expressed in its acts of (1) removing ACA Medicaid expansion from HB 59; and (2) prohibiting ACA Medicaid expansion in HB 59.

Accordingly, Relators' Complaint demonstrates that they are entitled to a writ of mandamus ordering Respondent Ohio Controlling Board to vacate its void and unlawful October 21, 2013 order appropriating funds to expand Medicaid spending in Ohio. But for this writ to be meaningful, it must be granted in a timely fashion.

B. Expedition is proper.

First, the granting of this Motion is well within this Court's discretion and traditions. In *State ex rel. Seth A. Morgan v. Governor Ted Strickland*, Case No. 2009-Ohio-0614, this Court, by Entry dated April 8, 2009 granted the relators' request for an Order expediting consideration based upon an immediate need for information contained within certain public records. Similarly, in *State ex rel. Ohio Christian Alliance, et al. v. Strickland*, Case No. 2009-Ohio-1648, this Court, by Entry dated September 22, 2009, granted the relators' request for an Order expediting consideration based upon the need for prompt judicial review of their constitutional claims.

Relators respectfully submit that this matter presents issues of an even greater order of magnitude than those presented in the aforementioned cases: at stake are (1) the checks and balances demanded by our constitutional system of government, i.e. whether the Ohio General Assembly, and its expressed intent, can be circumvented in appropriating billions;² (2) the potential remaking of Ohio's health care system in a manner that the Supreme Court of the United States in *National*

² This Court holds "[b]ecause the General Assembly cannot delegate its legislative authority, the Controlling Board cannot make laws." *State ex rel. Meshel v. Keip* (1980), 66 Ohio St.2d 379.

Federation of Independent Business v. Sebelius, explained transforms a state's Medicaid program from "a program to care for the neediest among us" to "an element of a comprehensive national plan to provide universal health insurance coverage" that "dramatically increases state obligations under Medicaid," and is "an attempt to foist an entirely new health care system upon the States." (Elsewhere the Court characterizes the expansion as "a *new* health care program" and "a shift in kind."); and (3) a looming January 1, 2014 deadline for finalization of the extent of Ohio's Medicaid coverage as against the Department of Medicaid's public threat to bankrupt Ohio's Medicaid system.³

Second, this is a matter involving legal issues only, involving no need for discovery or evidence. It posits the simple legal question of whether the Controlling Board transgressed its jurisdiction and authority, which is limited by R.C. 127.17 and the Ohio Constitution to effectuating the intent of the General Assembly, when it appropriated Medicaid expansion funds that the Ohio General Assembly clearly sought to prohibit. The intent of the General Assembly is readily ascertainable through review of the General Assembly's public acts and the plain language of House Bill 59, as submitted to the Governor in June.

C. Expedition is Necessary.

Expedition is warranted because this is a matter of great exigency. On October 10, 2013, the Director of the Ohio Department of Medicaid, anticipating receipt of federal funds through unlawful Controlling Board appropriation, purported to commit Ohio to covering the billions of dollars in costs for a greatly-expanded population of entitlement recipients, effective January 1, 2013.

On a September 26, Ohio Director of Medicaid John McCarthy submitted to the Federal Government a proposed "State Plan Amendment" that proposed Ohio be obligated to expand Medicaid coverage and spending (by \$3 Billion over the next two years), effective January 1, 2014, as contemplated by the Patient Protection and Affordable Care Act. And on October 10, the Federal

³ See October 21, 2013 Testimony of Dept. of Medicaid Director McCarthy. Although there is no transcript of this hearing, Relators' testify to having witnessed it in their Verified Complaint, and the video is available at <http://www.youtube.com/watch?v=LvIVvN-9dSI>, last checked October 23, 2013.

Government, through the Center for Medicare & Medicaid Services ("CMS"), approved a State Plan Amendment.

Thus, as of this date, Ohio is currently bound, effective January 1, 2014, to provide "Medicaid coverage for individuals with incomes below 133% of the Federal Poverty Level."⁴ (The very coverage that the General Assembly removed from the budget and then prohibited). However, the Ohio General Assembly (1) did not budget for these costs; (2) removed from the budget the appropriation for these costs; and (3) prohibited any appropriation for these costs.

Consequently, absent a decision by January 1, the Ohio Department of Medicaid will begin to the process of unlawfully over-extending Ohio's Medicaid system through offering expanded coverage that there is no lawful appropriation to fund. Indeed, at the October 21 Controlling Board hearing, Director McCarthy testified that if the funds were not appropriated, he would set a course that would render Ohio's Medicaid system insolvent at some point in 2014.⁵ Meanwhile, the Department of Medicaid is on the brink of administratively setting Medicaid eligibility standards, and beginning enrollment of the putatively expanded class of individuals - - all with reliance upon the federal funds that the General Assembly has sought to prohibit. In the process, hundreds of thousands of Ohioans may reasonably rely upon, and be misled as to, their eligibility for Medicaid.

However, a ruling from this Court prior to January 1, 2014 would avert such a crisis: it would afford the Department of Medicaid an opportunity to (1) reach a lawful solution for Ohio's Medicaid program with the Ohio General Assembly; (2) modify its State Plan Amendment with the federal government so as to not require coverage of the ACA-designated population (it took CMS just two weeks to grant the last State Plan Amendment) beginning on January 1; or (3) seek a waiver from the federal government. Absent such a ruling, the Department Medicaid may proceed in

⁴ See October 10 State Plan Amendment. Emphasis added. Attached hereto.

⁵ See footnote 2.

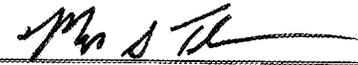
binding Ohio to offer expanded Medicaid coverage that will ultimately be unfunded - - an unmitigated disaster for all Ohioans.

Consequently, this matter features the equivalent of a ticking time-bomb for Ohio's budget and constitution: absent expedition from this court, Ohio risks the solvency of its entire state budget in response to the clearly unlawful acts of a small and obscure administrative body.

D. Conclusion

In short, because the Controlling Board (1) is bound to act consistently with General Assembly intent; but (2) dramatically diverged from this intent in appropriating ACA Medicaid expansion funds, Relators are highly likely to prevail on the merits of their claims. Thus, to avert a budgetary and constitutional crisis of the higher order, Relators respectfully request that this Honorable Court set a briefing schedule approximate to that of elections matters calendared pursuant to Ohio Supreme Court Rule X, Section 9, so as to facilitate resolution of this critical issue in advance of January 1, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing was served upon the parties specified below this 23rd Day of October, 2013:

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