

IN THE SUPREME COURT OF OHIO

ORIGINAL

PROGRESSOHIO.ORG, INC., ET AL.

CASE NUMBER 2012-1272

Appellants

Regular Calendar

v.

JOBSOHIO, ET AL.

Appellees

MOTION FOR COURT TO ORDER THE ATTORNEY GENERAL TO FILE AN ACTION IN
QUO WARRANTO OR TO DECLARE CONFLICT

MOTION FOR MOVANT TO BE APPOINTED TO PROCEED IN QUO WARRANTO

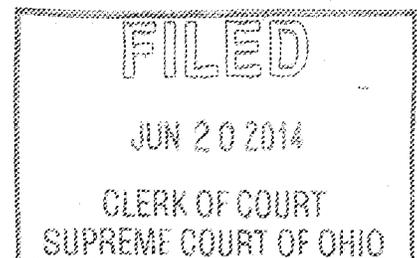
MOTION TO INTERVENE FOR THE PURPOSES OF THE SAVINGS CLAUSE

MOTION FOR LEAVE TO FILE ACTION IN QUO WARRANTO

MICHAEL DEWINE (0009181)
Ohio Attorney General
ALEXANDRA SCHIMMER0075732
STEPHEN P. CARNEY (0063460)
PEARL M. CHIN (0078810)
Assistant Attorneys General
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
alexandraschimmer
@ohioattorneygeneral.gov
pearlchinn@ohioattorneygeneral.gov
Attorney for Defendants
Ohio Governor John R. Kasich et al.

VICTORIA E. ULLMANN (0031468)
Attorney at Law
1135 Bryden Road
Columbus, Ohio 43205
victoria_ullmann@hotmail.com
(614)253-2692
Amicus Curiae

DENNIS MURRAY, Jr. (0038509), *Pro se*
111 East Shoreline Dr.
Sandusky, Ohio
(419) 624-3126
dmj@murray and murray.com



Aneca E. Lasley (0072366)
Squires, Saunders, LLP
2000 Huntington Center
Columbus, Ohio 43215
Tel: (614)365-2830

Fax: (614) 365-2499 Fax: (614) 253-2692

Douglas Cole (0070665)
Organ, Cole and Stock
1335 Dublin Road Suite 104 D
Columbus, Ohio 43215
Tel: (614) 481-0902
dreolerc^ocslawfirm.com
*AtioNney for Respondents JobsOhio and
John Minor*

Michael Skindell, (0039041), *Pro se*
55 Public Square
Cleveland, Ohio 44113
(216)-621-0070
mskindell@aol

MAURICE THOMPSON
1851 Center for Constitutional Law
208 East State Street
Columbus, Ohio 43215
(614)3409817
Counsel of Record Appellants
Amicus Curiea

Victoria E. Ullmann, amicus curiae and lead counsel in this action prior to the unfortunate appearance of the 1851 Center, hereby moves this Court to order Michael Dewine, Attorney General of the State of Ohio to commence an action in quo warranto immediately to determine whether JobsOhio, as it is currently created, composed, funded and operated can exist as a private corporation in Ohio. In the alternative, Ullmann moves that private counsel be appointed due to his conflicts in this matter.

This Court has original jurisdiction in quo warranto. Ohio Const. 4.02. R.C. 2733.04 states that the initial decisions regarding if and how a quo warranto is to be filed can be determined “upon complaint or otherwise” so this request for initial findings by this Court as a motion in this appeal is not foreclosed by the statutory language. All relevant parties are before the Court. Amicus can find no court rule that limits post judgment motions to motions for reconsideration or that prohibit amicus from filing a motion other than one for reconsideration. This motion has been filed within the time limit for a motion to reconsider.

As the attorney general is clearly so deeply mired in conflict in this matter that his office cannot handle the quo warranto, amicus moves that he be further ordered to appoint special counsel to handle the filing or that this Court choose a member of the private bar to proceed on the writ. As movant is before the Court and willing and able to handle this matter, she requests the appointment. She has also already fulfilled her obligation by requesting Prosecutor O’Brien to file the action and he has not responded. (See attached)

I. The proper form of action to address the unconstitutionality of JobsOhio is a proceeding in quo warranto.

For the past three years, movant and others have struggled to find a way to preserve the viability of Article XIII of the Ohio Constitution in the face of what can fairly be characterized as government corruption in the creation and then protection of the unconstitutional quasi government corporation called JobsOhio. The framers of the 1851 Constitution knew well that when state government allows itself to be too closely intertwined with private business interests, corruption will occur. This was one of the primary reasons the convention was called that created what became the 1851 Constitution for Ohio. That is why Article XIII exists in the document.

At the very first meeting of the ProgressOhio litigation group, Ullmann stated that the proper form of action would be quo warranto and at this point that is all that remains to address the gross constitutional violation that is JobsOhio.

Quo warranto is an ancient writ that has long been used to test the validity of a corporate entity and it is codified at R.C. 2733.02:

A civil action in quo warranto may be brought in the name of the state against a corporation:

(A) When it has offended against a law providing for its creation or renewal, or any amendment thereof;

(B) When it has forfeited its privileges and franchises by nonuser;

(C) When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;

(D) When it has misused a franchise, privilege, or right conferred upon it by law, or when it claims or holds by contract or otherwise, or has exercised a franchise, privilege, or right in contravention of law; ...

In its decision on standing in this action, this Court has found that the proper form of action would be a writ that cannot filed in common pleas court and that the individual has some form of standing. Quo warranto fulfills both these requirements, as R.C. 2733.03 allows the writ

only to be filed in the court of appeals or this Court. It further grants standing to the attorney general or the prosecuting attorney to proceed in the public interest upon finding of "good reason to believe" that a violation occurred. R.C. 2733.04 This Court has the power to appoint a private attorney to proceed, which then would transfer that standing to private counsel. R.C. 2733.07. So good reason to believe that R.C. 2733.02 has been violated creates standing for quo warranto since the existence of an invalid corporation is a very serious public matter.

II. Quo warranto relies on the integrity of the government to protect the public from invalid corporations, but the executive branch of the State of Ohio currently lacks the integrity to so.

Quo warranto is not available in the first instance to private parties and a government entity must first direct that it be filed:

When directed by the governor, supreme court, secretary of state, or general assembly, the attorney general, or a prosecuting attorney, shall commence an action in quo warranto. When, upon complaint or otherwise, either of such officers has good reason to believe that any case specified in section 2733.02 of the Revised Code can be established by proof, he shall commence such action. R.C. 2733.04.

The difficulty with quo warranto here of course is that it is an action that relies on the integrity of the executive branch of government to insure that the writ is filed. That integrity is entirely absent here. In addition to executive branch actors, this section grants this Court the authority to direct a quo warranto action be initiated. Because this quo warranto involves an unconstitutional corporation established by the governor, secretary of state, and legislature in defiance of Ohio Const. Art. 13 and defended improperly by the attorney general, it falls upon

this Court to demonstrate that of the branches of government here, it will act to enforce the Ohio Constitution.

From the beginning of this process, Attorney General Michael Dewine had utterly and completely failed in his obligations under R.C. 2733 to file an action in quo warranto to determine the validity of JobsOhio. He has always had not only standing to pursue this action in the public interest, but a clear and indisputable basis to do so. However, as the framers well knew, private and public partnerships are corrupting on such a basic level that it could well result in state office holders abandoning their obligations. The attorney general has indisputably done so here.

A. Good cause to file the writ has been continually demonstrated throughout the tortured history of this case.

Ullmann has addressed the merits of the Article XIII argument in a variety of filings, including the merit brief before the 10th District, the Memorandum in Support of Jurisdiction and her amicus merit brief here. Both Justice Pfeifer and Justice O'Neil discuss the bases of what would form a quo warranto action in dissents, demonstrating that there are adequate grounds for this Court to order an action be filed. However, the most complete discussion of it is by far the memorandum of law filed by special counsel defending David Goodman. *JobsOhio v. Goodman*, 2012-1356. It is simply indisputable that the brief filed by James King of Porter Wright in *JobsOhio v. Goodman, as special counsel to the attorney general* sets forth good cause pursuant to 2733.04 for the attorney general to file a quo warranto against JobsOhio.

B. The attorney general cannot be trusted to handle this matter due to gross conflict.

Of course the conflict is apparent on the record, since the attorney general's primary strategy throughout this action has been to block all determination of this issue on the merits. His actions are not in the public interest.

Although there is a conflict for the attorney general when the General Assembly passes an unconstitutional law, for a quo warranto action against JobsOhio, he could have appointed special counsel to proceed or one of the county prosecutors to do so. Instead of choosing the appropriate form action to litigate this outside the ProgressOhio case, he chose instead to collude with JobsOhio to create a sham mandamus action against David Goodman to put on a show for the bond buyers to push the liquor bonds to fund JobsOhio. Had he brought an action in quo warranto rather than that bogus mandamus, the merits of this action would have been addressed two years ago. Instead he spent large amounts of taxpayer funds to hire outside counsel to defend the collusive mandamus action.

In three years, no proper writ was ever filed by the state. This indisputably demonstrates a conflict attributable to the attorney general's office and to special counsel he hired to work on this issue. R.C. 2733.07 provides that if conflicts prevent government actors for proceeding in quo warranto that this Court may allow a private member of the bar to proceed. R.C. 2733 required that "in an action in quo warranto, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto. If leave is granted, an entry thereof shall be made on the journal, or the fact shall be indorsed by the judge on the petition, which shall then be filed."

Although this section indicates the determination regarding appointment of private counsel would generally be done when the quo warranto petition is presented to the Court. Ullmann asks the Court to appoint private counsel to prosecute a quo warranto against JobsOhio

in this action in the event the Court should determine someone other than Ullmann, such a special counsel to the attorney general, should proceed with this action. All the parties are before the Court and being served easily in this action.

Ullmann is knowledgeable of the issues here and can proceed promptly with filing the complaint in quo warranto. Attached is amicus's request to Franklin County Prosecutor Ron O'Brien to accept the case. See, *Thomas v. Kane*, (1989) 43 Ohio St. 3d 164. He is not a necessary party for the Court to grant leave to file since the Attorney General has a presence in this case. However, amicus will deliver a copy of this motion to his office by email promptly upon filing. She has not received a response from her letter which was emailed to the prosecutor on June 11. If the prosecutor steps up to file the writ, and he will have an opportunity before the Court rules, Ullmann will withdraw her request.

If this Court fails to act to direct the filing of a quo warranto here, it is tantamount to repealing Ohio Const. Article XIII without the mandated vote of the people of the state.

II. Once appointed, private counsel steps into the shoes of the government and their standing is transferred to

By assigning the obligation to file quo warranto to the government itself, the General Assembly has designated corporate invalidity to be a matter of great public importance. Once good cause is demonstrated to file the writ, then the government is cloaked with standing to proceed. The attorney general has standing to bring a quo warranto now for years, and has violated the public trust by failing to act. Once this Court appoints a private attorney to proceed, they stand in the place of the attorney general or prosecutor with standing to protect the state in the public interest.

When this case changes its posture from a declaratory judgment to a quo warranto, Ullmann can allege a personal stake for standing as well. She has been doing the work of public officials without payment for the past three years in litigating this case and has experienced a loss due to the inaction and, frankly, corruption of the executive branch.

Finally, Ullmann requests that the Court reconsider and grant her motion to intervene filed earlier in this case. Although the 60 day statute of limitations in 187.09 may apply to a quo warranto and the 90 day statute of limitations may well be invalid, granting the motion to intervene would provide savings clause protection for her filing. The parties to this action would have that already, but as the Court noted throughout its opinion, without the movant as lead counsel, this appeal completely fell apart and appellants' briefs did not even comply with standard appellate procedure. Therefore they should not be viewed as eligible for the appointment to proceed in quo warranto.

R.C. 2733.05 allows the attorney general to proceed as relator as well as counsel in a quo warranto action. This section, therefore, should also allow the appointed counsel to also proceed pro se. Ullmann plans to file the quo warranto pro se. Although the Court tends to discourage pro se filings that is clearly the only way this will happen here. This is a matter that is entirely a legal issue that is not inappropriate for a pro se attorney to handle.

WHEREFORE, movant moves this Court to grant leave to file an action in quo warranto, declare the attorney general to have a conflict and the Franklin County Prosecutor to be similarly conflicted or otherwise unavailable, grant movant's motion to intervene and appoint her as counsel to proceed in quo warranto.

Respectfully submitted,



Victoria E. Ullmann (31468)

Attorney at law

1135 Bryden Road

Columbus, Ohio 43205

(614)253-2532

Victoria_ullmann@hotmail.com

CERTIFICATE OF SERVICE

A copy of this motion was served by email on all attorneys.

Respectfully submitted,



Attorney at law

VICTORIA E. ULLMANN

ATTORNEY AT LAW

1135 BRYDEN ROAD
COLUMBUS, OHIO 43205
(614)253-2692
FAX (614) 253-2692

June 11, 2014

Nick Soulas, Esq.
First Assistant Prosecutor, Civil Division
Franklin County Prosecutor's Office
373 South High Street
Columbus, Ohio 43215

Re: Quo Warranto Action regarding JobsOhio

Dear Mr. Soulas,

I have been involved in various capacities from lead counsel to amicus to relator in the JobsOhio litigation that has been taking place the last few years. I have always thought that the proper form of action to challenge JobsOhio, which is an illegal corporation, is by quo warranto. Of course only the attorney general or your office can file that writ against a corporation with its home in Franklin County. The attorney general's conflict of interest is too gross to need discussion. I also think that it would be an incredible burden for any Republican county elected official to take the kind of risk involved to challenge Jobs Ohio, so I have always considered that it would be actually unfair to ask your office to file such a case. So we attempted other approaches, none of which have provided the ability to obtain a decision on the merits. Quo warranto is all that is left. R.C. 2733.07 indicates that a private attorney can be appointed by the court to substitute for the prosecutor in cases where the prosecutor is not able to handle the case. However, the one case I can find on the issue, *State ex rel Thomas v. Kane*, 42 Ohio St. 3rd 142 indicates that I need to ask your office if you will file the quo warranto prior to filing a request with the court.

Article 13 states that the General Assembly cannot make special laws to sponsor a corporation and that has clearly occurred with JobsOhio. Virtually all of this corporation's governance is controlled by R.C. 187.01 et seq. There is also a variety of unconstitutional debt issues involved in its existence. I can provide you with additional information if you need it. However, I am willing to finish what I started on this issue by myself and will seek the appointment if the prosecutor cannot take on this matter without ramifications that would be detrimental to your office.

Please advise me if you are willing to proceed with an action to determine the constitutionality of this entity or if you waive your office's authority to do so due to the political nature of the case and allow me to request the court appointment.

Thank you in advance for your consideration in advance in this challenging matter.

Yours truly,

Victoria E. Ullmann

Victoria E. Ullmann