

ORIGINAL

In the
Supreme Court of Ohio

State ex rel. OHIO CIVIL SERVICE	:	Case No. 2014-0319
EMPLOYEES ASSOCIATION, et al.,	:	
	:	On Appeal from the
Appellees/Cross-Appellants,	:	Franklin County
	:	Court of Appeals,
v.	:	Tenth Appellate District
	:	
STATE OF OHIO, et al.,	:	Court of Appeals
	:	Case No.12AP001064
Appellants/Cross-Appellees.	:	

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	5
A. As part of the biennial budget bill for Fiscal Years 2012-2013, the General Assembly authorized the Department to both raise revenue and reduce spending by selling, or privatizing the management of, five specified prisons.	5
B. The Department relied on the budget bill to privatize two prison facilities.	7
C. Plaintiffs sought a declaration that the prison-privatization provisions violated the Ohio Constitution’s one-subject rule, but the trial court rejected their argument.	7
D. The Tenth District reversed and remanded for an evidentiary hearing to determine whether the 2012-2013 biennial budget bill was invalid both in its entirety and on a broad provision-by-provision basis.....	8
ARGUMENT.....	11
<u>State Appellants’ Proposition of Law 1:</u>	
<i>Provisions in a biennial budget bill that authorize state agencies to raise specific types of revenue do not violate the Ohio Constitution’s one-subject rule merely because they set the terms by which the state agencies may do so.....</i>	11
A. The judiciary’s one-subject review must give the General Assembly wide latitude to determine whether different provisions within a bill address a central “subject.”	11
1. The usual deferential standard of review for all constitutional challenges applies to the one-subject rule.....	12
2. The one-subject rule requires heightened deference given the impossibility of establishing neutral one-subject guidelines.	13
3. The Court’s historical treatment of the one-subject rule confirms the great deference due the General Assembly.....	16
4. The one-subject rule’s purpose cements the need for deference.	17

B.	Given the need for broad legislative discretion, the Court should hold that the one-subject rule allows the General Assembly to include all matters in appropriation bills that could rationally—rather than just tenuously—affect the State’s budget.	19
1.	The Court should broadly define the “subject” in the appropriations context.....	20
2.	The Court should allow for a broad “connection” between the general budgetary subject and any particular provision in an appropriation bill.	21
3.	Specific examples in the appropriations context illustrate how this rational-basis test applies in practice.	23
C.	The 2013-2014 biennial budget bill’s prison-privatization provisions could rationally affect—indeed, have directly affected—the state budget and operations.....	25
D.	The Tenth District’s contrary analysis failed to properly defer to the General Assembly’s budgetary choices.....	29
1.	The Tenth District mistakenly defined the budget bill’s “subject.”.....	29
2.	The Tenth District required too close of a connection between a particular provision and a bill’s general subject.....	32

State Appellants’ Proposition of Law 2:

As long as a biennial budget bill, on its face, has a common purpose, courts should not permit evidentiary hearings to attack that bill in its entirety through an intrusive provision-by-provision analysis under the one-subject rule.....

A.	A bill that has a primary subject should not be invalidated in its entirety under the one-subject rule even if some provisions do not rationally relate to that subject.	35
B.	The 2012-2013 biennial budget bill—like all biennial budget bills—has a central subject of the state budget and operations.	38
C.	The Tenth District erred by remanding for the trial court to both determine the validity of the entire bill and undertake an onerous provision-by-provision review.	39

CONCLUSION.....43

CERTIFICATE OF SERVICE

APPENDIX:

Appx. Page

Notice of Appeal	Appx. 1
Judgment Entry, Tenth Appellate District, January 22, 2014.....	Appx. 6
Opinion, Tenth Appellate District, January 16, 2014	Appx. 7

Judgment Entry, Tenth Appellate District, October 28, 2013Appx. 10
Opinion, Tenth Appellate District, October 10, 2013.....Appx. 11
Opinion, Franklin County Common Pleas Court, November 20, 2012.....Appx. 28
Applicable LawsAppx. 55

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Am. Ass'n of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.</i> , 87 Ohio St. 3d 55 (1999).....	22
<i>Arbino v. Johnson & Johnson</i> , 116 Ohio St. 3d 468, 2007-Ohio-6948.....	42
<i>Beagle v. Walden</i> , 78 Ohio St. 3d 59 (1997).....	<i>passim</i>
<i>Cent. Ohio Transit Auth. v. Transp. Workers Union of Am.</i> , 37 Ohio St. 3d 56 (1988).....	12
<i>Cincinnati, Wilmington & Zanesville R.R. v. Comm'rs of Clinton Cnty.</i> , 1 Ohio St. 77 (1852).....	12
<i>City of Brookfield v. Milwaukee Metro. Sewerage Dist.</i> , 491 N.W.2d 484 (Wis. 1992).....	15
<i>City of Riverside v. State</i> , 190 Ohio App. 3d 765, 2010-Ohio-5868 (10th Dist.) (French, J.)	<i>passim</i>
<i>Cleveland v. State</i> , 138 Ohio St. 3d 232, 2014-Ohio-86.....	35
<i>ComTech Sys., Inc. v. Limbach</i> , 59 Ohio St. 3d 96 (1991).....	<i>passim</i>
<i>Cuyahoga Cnty. Veterans Servs. Comm'n v. State</i> , 159 Ohio App. 3d 276, 2004-Ohio-6124 (10th Dist.).....	24, 27
<i>F.C.C. v. Beach Commc'ns, Inc.</i> , 508 U.S. 307 (1993).....	16
<i>Geiger v. Geiger</i> , 117 Ohio St. 451 (1927).....	36, 39
<i>Gregory v. Shurtleff</i> , 299 P.3d 1098 (Utah 2013).....	15, 18
<i>Groch v. Gen. Motors Corp.</i> , 117 Ohio St. 3d 192, 2008-Ohio-546.....	<i>passim</i>
<i>Heller v. Doe</i> , 509 U.S. 312 (1993).....	33

<i>In re Nowak</i> , 104 Ohio St. 3d 466, 2004-Ohio-6777.....	<i>passim</i>
<i>Meeks v. Papadopoulos</i> , 62 Ohio St. 2d 187 (1980).....	29
<i>Mitchell v. Lawson Milk Co.</i> , 40 Ohio St. 3d 190 (1988).....	40
<i>Nixon v. United States</i> , 506 U.S. 224 (1993).....	16, 17
<i>Oshe v. State</i> , 37 Ohio St. 494 (1882).....	16, 17
<i>Pickaway Cnty. Skilled Gaming, L.L.C. v. Cordray</i> , 127 Ohio St. 3d 104, 2010-Ohio-4908.....	23
<i>Pim v. Nicholson</i> , 6 Ohio St. 176 (1856).....	16, 17
<i>ProgressOhio.org, Inc. v. JobsOhio</i> , 139 Ohio St. 3d 520, 2014-Ohio-2382.....	42
<i>Rodriguez v. United States</i> , 480 U.S. 522 (1987).....	18
<i>Schulman v. City of Cleveland</i> , 30 Ohio St. 2d 196 (1972).....	40
<i>Simmons-Harris v. Goff</i> , 86 Ohio St. 3d 1 (1999).....	<i>passim</i>
<i>Snyder v. Phelps</i> , 131 S. Ct. 1207 (2011).....	19
<i>Solon v. Martin</i> , 2008-Ohio-808 (8th Dist.)	<i>passim</i>
<i>State ex rel. Ach v. Braden</i> , 125 Ohio St. 307 (1932).....	16
<i>State ex rel. Attorney Gen. v. Covington</i> , 29 Ohio St. 102 (1876).....	16
<i>State ex rel. Barletta v. Fersch</i> , 99 Ohio St. 3d 295, 2003-Ohio-3629.....	5, 42

<i>State ex rel. Brown v. Ferguson</i> , 32 Ohio St. 2d 245 (1972).....	19
<i>State ex rel. Dickman v. Defenbacher</i> , 164 Ohio St. 142	12
<i>State ex rel. Dix v. Celeste</i> , 11 Ohio St. 3d 141 (1984).....	<i>passim</i>
<i>State ex rel. Hickman v. Capots</i> , 45 Ohio St. 3d 324 (1989).....	5, 40
<i>State ex rel. Hinkle v. Franklin Cnty. Bd. of Elections</i> , 62 Ohio St. 3d 145 (1991).....	22, 36
<i>State ex rel. LetOhioVote.org v. Brunner</i> , 123 Ohio St. 3d 322, 2009-Ohio-4900.....	<i>passim</i>
<i>State ex rel. Maurer v. Sheward</i> , 71 Ohio St. 3d 513 (1994).....	36
<i>State ex rel. Ohio Acad. of Trial Lawyers v. Sheward</i> , 86 Ohio St. 3d 451 (1999).....	<i>passim</i>
<i>State ex rel. Ohio AFL-CIO v. Voinovich</i> , 69 Ohio St. 3d 225 (1994).....	<i>passim</i>
<i>State ex rel. Ohio Civil Service Employees Association v. State Employment Relations Board</i> , 104 Ohio St. 3d 122, 2004-Ohio-6363.....	<i>passim</i>
<i>State ex rel. Ohio Roundtable v. Taft</i> , 2003-Ohio-3340 (10th Dist.)	<i>passim</i>
<i>State ex rel. ProgressOhio.org v. State</i> , No. 11-CV-10647, at 16 (Franklin Ct. Com. Pl. Aug. 31, 2011).....	7
<i>State ex rel. Seikbert v. Wilkinson</i> , 69 Ohio St. 3d 489 (1994).....	40
<i>State ex rel. White v. Kilbane Koch</i> , 96 Ohio St. 3d 395, 2002-Ohio-4848.....	42
<i>State v. Bloomer</i> , 122 Ohio St. 3d 200, 2009-Ohio-2462.....	<i>passim</i>
<i>State v. Bodyke</i> , 126 Ohio St. 3d 266, 2010-Ohio-2424.....	35

<i>State v. Foster</i> , 109 Ohio St. 3d 1, 2006-Ohio-856.....	35
<i>Stroh Brewery Co. v. State</i> , 954 S.W.2d 323 (Mo. 1997)	19
<i>Thing v. La Chusa</i> , 771 P.2d 814 (Cal. 1989).....	34
<i>Vieth v. Jubelirer</i> , 541 U.S. 267 (2004).....	16, 17
<i>Vought v. Columbus, Hocking Valley & Athens R.R.</i> , 58 Ohio St. 123 (1898).....	16

Statutes, Rules, and Constitutional Provisions

Am. Sub. H.B. 1.....	39
Am. Sub. H.B. 117.....	5, 27
Am. Sub. H.B. 153	
§§ 203.10-620.40	38
§ 217.10.....	34
§ 279.10.....	34
§ 753.10.....	<i>passim</i>
§ 806.10.....	4, 39
Am. Sub. H.B. 291.....	39
Civ.R. 8(A).....	10, 40
Ohio Const. art. II, § 15(D).....	11
Ohio Const. art. II, § 16	19
1983 Ohio Laws 2872.....	39
1995 Ohio Laws 900.....	5, 27, 39
R.C. 1.50.....	36
R.C. 9.06.....	8, 9, 10
R.C. 9.06(A) (1995).....	5
R.C. 9.06(A)(1).....	5, 28
R.C. 9.06(A)(4).....	1, 3, 6, 27

R.C. 9.06(J)(1)	6
R.C. 9.06(J)(3)	6
R.C. 9.06(J)(4)(a)-(b)	7
R.C. 9.06(J)(4)(c)	7
R.C. 2151.356(A)	33
R.C. 3770.21	32
R.C. 5120.092	3, 6, 26

Other Authorities

1A Sutherland Statutory Construction § 17:1 (7th ed. 2013)	19
Aaron Marshall, <i>State Senate OKs its Budget Bill on Party-Line Vote</i> , Cleveland Plain Dealer, June 9, 2011, available at 2011 WLNR 11690116.....	28
Alan Johnson, <i>5 Prisons to Be Put on Block by State</i> , Columbus Dispatch, Mar. 15, 2011, available at 2011 WLNR 5111906.....	28
Daniel H. Lowenstein, <i>Initiatives & the New Single Subject Rule</i> , 1 Elec. L.J. 35, 47 (2002).....	13
Frank Lewis, <i>Kasich Looking to Privatize Prisons, Turnpike</i> , Portsmouth Daily Times, Feb. 15, 2011, available at 2011 WLNR 2995592.....	28
<i>In-depth Coverage on Prison Funding</i> , Dayton Daily News, Mar. 11, 2011, available at 2011 WLNR 5112789.....	28
Jessica Cuffman, <i>Private Prisons See Opposition</i> , Marion Star, May 30, 2011, available at 2011 WLNR 10774240.....	28
John G. Matsusaka & Richard L. Hasen, <i>Aggressive Enforcement of the Single Subject Rule</i> , 9 Elec. L.J. 399 (2010).....	15
John Kulewicz, <i>The History of the One-Subject Rule of the Ohio Constitution</i> , 45 Clev. St. L. Rev. 591 (1997).....	16, 17
Laura A. Bischoff, <i>House Passes State Budget</i> , Dayton Daily News, May 6, 2011, available at 2011 WLNR 9295819.....	28
Legislative Service Commission, <i>Redbook</i> at 6 (Apr. 2011), available at http://www.lsc.state.oh.us/fiscal/redbooks129/drc.pdf	29

OBM, *State of Ohio Executive Budget Fiscal Years 2012 & 2013* (Mar. 2011),
available at

<http://media.obm.ohio.gov/OBM/Budget/Documents/operating/fy-12-13/bluebook/Book1-Budget-FY2012-2013.pdf>.....29

INTRODUCTION

Every Ohio family knows that they must set their spending at a level that does not exceed their income; that is, their expenditures and their revenues *both* relate to the single subject of the family budget. That commonsense principle goes a long way toward deciding this case. Given the budget crisis looming for the 2012-2013 Fiscal Years (with expected spending far exceeding expected revenue), the General Assembly's biennial budget bill, Am. Sub. H.B. 153, adopted many measures to close the gap. One measure—which authorized the Department of Rehabilitation and Corrections (“the Department”) to generate revenue and reduce spending by reinvigorating an old program—is challenged here. The program, in existence since 1995, allows the Department to contract with private entities to operate prisons. The budget bill expanded the program by authorizing the Department to either sell five prisons (and generate revenue that would ultimately flow into the general revenue fund, Am. Sub. H.B. 153 § 753.10(C)(8)) or contract for their private operation (and reduce the Department's spending needs, R.C. 9.06(A)(4)). Because these provisions helped balance the State's budget, the General Assembly unsurprisingly placed them in a bill designed to balance the State's budget.

Despite these obvious budget connections, the Tenth District Court of Appeals held that Plaintiffs stated claims that the prison-privatization provisions violated the Ohio Constitution's one-subject rule because the provisions had no rational relationship to the bill's appropriations. *See State ex rel. Ohio Civ. Serv. Emps. Ass'n v. State*, 2013-Ohio-4505 ¶¶ 15-22 (10th Dist.) (“App. Op.,” at Appx. 11-27). Not only that, the Tenth District remanded to determine whether the over 3,000-page bill should be invalidated *in its entirety*, and also directed the trial court to conduct a line-by-line review to excise any potentially offending sections. App. Op. ¶¶ 23-24. These holdings cast a cloud over vital legislation, and leave the General Assembly in the dark on what it may include in future bills making appropriations. This Court should reverse.

The Challenge to the Prison-Privatization Provisions. The Court should initially hold that the General Assembly could include the prison-privatization provisions in the biennial budget bill. The Tenth District’s rigorous review more closely resembles the *strictest* of scrutiny that courts apply under the Free Speech or Equal Protection Clauses than the *deferential* standard this Court applies under the one-subject rule. In that respect, it is no overstatement to say that the deference due the General Assembly under the one-subject rule exceeds the deference due the General Assembly under any other judicially enforceable provision of the Ohio Constitution. After all, a one-subject violation is not enough; the Court requires the violation to be “manifestly gross and fraudulent” before the judiciary should intervene. *See In re Nowak*, 104 Ohio St. 3d 466, 2004-Ohio-6777 syl. ¶ 1. Under no other constitutional provision has the Court invoked adjectives like “blatant,” “fraudulent,” or “gross” to describe the high standard a challenger must meet to invalidate a law, and under no other constitutional provision has the Court, for good measure, added the adverb “manifestly” to bring home the point that the Court really means it when it talks about heightened one-subject deference. *See State ex rel. Dix v. Celeste*, 11 Ohio St. 3d 141, 145 (1984).

Adhering to these deferential standards, the Court should find that the General Assembly may include all matters in appropriation bills that could *rationaly* affect the State’s *budget*. This test best comports with the Court’s cases. The broad definition of the “subject” of a typical biennial budget bill—balancing the State’s budget—follows the Court’s instruction that, “in order to accord appropriate deference to the General Assembly in its law-making function, a subject for purposes of the one-subject rule is to be liberally construed as a classification of significant scope and generality.” *State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 498 (1999). And the broad “connection” that a particular provision can have to this

budget subject—that it could *rationaly* affect the budget—adheres to the Court’s guidance that a provision comports with the one-subject rule if a court can identify “discernible practical, rational, or legitimate reasons” for including it in the bill. *Dix*, 11 Ohio St. 3d at 145.

The prison-privatization provisions easily meet this test. They directly—not just rationally—affect the budget. The prison-sale provisions increase available funds. *See* R.C. 5120.092. The private-management provisions reduce spending. *See* R.C. 9.06(A)(4). These connections are more than enough. Indeed, the Court has held that the General Assembly may include a *new tax* in a biennial budget bill because it increases revenue. *See ComTech Sys., Inc. v. Limbach*, 59 Ohio St. 3d 96, 99 (1991). While tax increases may be one way to balance the budget, they are not the only way. Other methods can equally coexist with appropriations. To hold otherwise would interpret the one-subject rule as placing a thumb on the scale for tax increases over other revenue sources, spending cuts, or efficiency gains. But such policy decisions over the size of government are for the political branches, not the judicial branch.

The Tenth District’s contrary decision rests on a mistaken view of two cases. Based on *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900, the Tenth District narrowly defined the bill’s subject as “appropriations.” *See* App. Op. ¶ 15. But *LetOhioVote* interpreted the Ohio Constitution’s *right-of-referendum* provision, not its *one-subject* provision. In particular, *LetOhioVote* held that the right of referendum’s “appropriations” exception must be *strictly* construed so as not to reach even provisions “inextricably tied” to appropriations. 2009-Ohio-4900 ¶ 35. The one-subject rule, by contrast, is *liberally* construed to reach all provisions with a rational relationship to spending. Based on *State ex rel. Ohio Civil Service Employees Association v. State Employment Relations Board* (“*OCSEA*”), 104 Ohio St. 3d 122, 2004-Ohio-6363, the Tenth District also required too close of

a connection between a particular provision and a bill's subject. It suggested that allowing prison sales "to lawfully be included in an appropriations bill would 'render[] the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously.'" App. Op. ¶ 20 (quoting *OCSEA*, 2004-Ohio-6363 ¶ 33). But *OCSEA* merely holds that tenuous budget impacts do not suffice. Here, the Tenth District conceded that the prison provisions "no doubt impact[]" the budget. *Id.* There is a big difference between *OCSEA*'s *tenuous* impacts and this case's *no-doubt* impacts.

The Challenge to the Entire Bill. The Court should decisively reject Plaintiffs' broader effort to invalidate the over 3,000-page bill *in its entirety*. The Court has repeatedly held that as long as a bill has a primary subject, courts should not invalidate the bill in its entirety even if the bill contains some unrelated provisions. It should merely sever the unrelated provisions. *See, e.g., Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶ 210. Biennial budget bills will always meet that lax standard for facial constitutionality as they have "revenues and expenditures" at their "core." *City of Riverside v. State*, 190 Ohio App. 3d 765, 2010-Ohio-5868 ¶ 44 (10th Dist.) (French, J.). This Court has thus said "there can be no doubt" that budget bills can survive one-subject scrutiny. *OCSEA*, 2004-Ohio-6363 ¶ 34. And such a result generally equates with legislative intent, as such bills almost always come with provisions making clear that "[t]he items of law contained" in them "are severable." Am. Sub. H.B. 153 § 806.10.

The Tenth District did not dispute that Am. Sub. H.B. 153 had a core subject, but offered two reasons for refusing to reject the facial attack now. *First*, the court pointed to this case's motion-to-dismiss posture—suggesting that the complaint "alleged a set of facts that if proved would entitle [Plaintiffs] to relief." App. Op. ¶ 24. It failed to identify what those "facts" were. To the extent it thought it must assume that the entire bill lacked a primary subject, that was clear

error. “Unsupported conclusions of a complaint are not considered admitted, . . . and are not sufficient to withstand a motion to dismiss.” *State ex rel. Hickman v. Capots*, 45 Ohio St. 3d 324, 324 (1989). Whether a bill has a “core” subject is a legal, not a factual, question.

Second, the Tenth District suggested that the trial court, even if it did not invalidate the bill, could undertake a line-by-line search for unrelated provisions. App. Op. ¶ 24. This unprecedented remand for judicial line-item vetoes conflicts with the complaint, with the case law, and with the judicial role. As for the complaint, it asked for *either* facial invalidation *or* specific invalidation of the prison-privatization provisions. It nowhere sought severance of unrelated provisions having nothing to do with the alleged prison-related injuries over which Plaintiffs sued. As for the case law, this Court has already rejected a facial challenge predicated on provisions *unrelated* to the suit without ordering a line-by-line inquiry into those provisions. *See Groch*, 2008-Ohio-546 ¶ 210. As for the judiciary’s role, the Court has long instructed lower courts not to issue “advisory opinions” on constitutional questions when unnecessary to do so. *See State ex rel. Barletta v. Fersch*, 99 Ohio St. 3d 295, 2003-Ohio-3629 ¶ 22.

For these reasons, and those below, the Court should reverse the Tenth District’s opinion and reinstate the trial court’s judgment dismissing Plaintiffs’ complaint.

STATEMENT OF THE CASE AND FACTS

A. As part of the biennial budget bill for Fiscal Years 2012-2013, the General Assembly authorized the Department to both raise revenue and reduce spending by selling, or privatizing the management of, five specified prisons.

In 1995, the General Assembly authorized the Department to contract with private entities to operate and manage state and local prison facilities. R.C. 9.06(A)(1); *see* 1995 Ohio Laws 900, 906-11 (Am. Sub. H.B. 117). A contract under this provision had to meet various requirements, including that the contractor save 5% in costs as compared to the Department’s own management, thereby shrinking the Department’s budget needs. *See* R.C. 9.06(A) (1995).

In 2011, as part of the General Assembly's efforts to balance the State's budget, the biennial budget bill for Fiscal Years 2012-2013—Am. Sub. H.B. 153—modified this prison-privatization program. The bill's title indicated that it was designed to “make operating appropriations for the biennium beginning July 1, 2011, and ending June 30, 2013; and to provide authorization and conditions for the operation of programs, including reforms for the efficient and effective operation of state and local government.” *See* Am. Sub. H.B. 153, at 11-12. An uncodified section gave the Department the authority to privatize five facilities—the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast Correctional Treatment Facility, the North Central Correctional Institution, and the North Central Correctional Institution Camp. *See* Am. Sub. H.B. 153 § 753.10(C)(1), (D)(1), (E)(1), (F)(1), (G)(1). For each facility, the Department could either contract only for its private operation, or contract both for that private operation and for the facility's sale. *See id.* § 753.10(B)(1), (4).

These prison-sale and private-operation provisions would affect the revenue side and the expenditure side of the 2012-2013 budget. On the expenditure side, the Department could contract for the private operation only if the contract met the program's condition that it reduce the Department's costs by at least 5%. *See* R.C. 9.06(A)(4). On the revenue side, if the Department sold a prison, the revenue would go into the adult and juvenile correctional facilities bond retirement fund; from there, any remaining revenue could go into, among others, the general revenue fund. Am. Sub. H.B. 153 § 753.10(C)(8), (D)(8), (E)(8), (F)(8), (G)(8); *see* R.C. 5120.092. Additionally, the prison property would become subject to property taxes and the private contractor's gross receipts and income would become taxable. *See* R.C. 9.06(J)(3).

The bill set the guidelines for these revenue-generating, cost-cutting contracts. A sold facility, for example, would generally be treated as if under the Department's control. R.C.

9.06(J)(1). The State also retained the right to repurchase the facility if a contractor chose to sell it, became insolvent, or failed to meet its obligations. R.C. 9.06(J)(4)(a)-(b). If a contract for operating the prison terminated, operational responsibilities would transfer to another contractor or the Department. R.C. 9.06(J)(4)(c). Any contracts also had to include provisions requiring a contractor to prefer hiring Department employees, requiring the Department to transfer to the contractor certain supplies, and requiring any deed to contain certain conditions. *See* Am. Sub. H.B. 153, § 753.10(B)(2)(b)-(c), (C)(2)-(7). Finally, the bill limited the Department's authority to enter any sales contracts to the 2012-2013 Fiscal Years. *See id.* § 753.10(C)(10), (D)(10), (E)(10), (F)(10), (G)(10).

B. The Department relied on the budget bill to privatize two prison facilities.

During the 2012-2013 Fiscal Years, the Department made two contracts under the budget bill's prison-privatization provisions. It contracted with Corrections Corporation of America to privately operate the Lake Erie Correctional Facility in Conneaut, Ohio, and sold that facility to Corrections Corporation for over \$72 million. Am. Compl. ¶ 1. It also contracted with Management and Training Corporation to privately operate the North Central Correctional Institution in Marion, Ohio, but retained ownership of the facility. *Id.* ¶ 2.

C. Plaintiffs sought a declaration that the prison-privatization provisions violated the Ohio Constitution's one-subject rule, but the trial court rejected their argument.

Most Plaintiffs initially sued in August 2011 seeking a temporary restraining order to prohibit the Department from privatizing the five prisons. A trial court denied the motion. *See State ex rel. ProgressOhio.org v. State*, No. 11-CV-10647, at 16 (Franklin Ct. Com. Pl. Aug. 31, 2011). Plaintiffs did not appeal, and instead voluntarily dismissed their suit.

About a year later, in July 2012, Plaintiffs Ohio Civil Service Employees Association (a union that represents public employees), several of its members affected by the prison

privatizations, and ProgressOhio.org sued numerous “State Defendants”—including the State, the Governor, the Attorney General, the Secretary of State, the Treasurer, the Auditor, the Department and its director, the Department of Administrative Services and its director, and the Office of Budget and Management and its director—as well as local officials and private contractors. *See* Am. Compl. ¶¶ 6-48. Plaintiffs alleged that the prison-privatization provisions violated the Ohio Constitution’s one-subject rule, right-of-referendum rule, and joint-stockholder rule. *See id.* ¶¶ 125-58. They sought a declaration that budget bill was unconstitutional *in its entirety* and that R.C. 9.06 and Am. Sub. H.B. 153 § 753.10 were unconstitutional *in particular*. *Id.* ¶¶ 168, 172. They asked the court to find the prison-privatization contracts “void,” and to require the State to return the \$72 million. *Id.*

The trial court granted Defendants’ motions to dismiss. *See State ex rel. Ohio Civ. Serv. Emps. Ass’n v. State*, No. 12-CV-8716, at 25 (Franklin Ct. Com. Pl. Nov. 20, 2012) (“Com. Pl. Op.,” at Appx. 28-54). As relevant here, the court found that the most analogous cases were *State ex rel. Ohio Roundtable v. Taft*, 2003-Ohio-3340 (10th Dist.), and *ComTech Systems, Inc. v. Limbach*, 59 Ohio St. 3d 96 (1991). *See* Com. Pl. Op. at 18-19. These cases, the court noted, held that “the introduction of a stream of revenue was sufficiently related to the core subject of revenues and expenditures to justify inclusion in an appropriations bill.” *Id.* at 19 (quoting *Ohio Roundtable*, 2003-Ohio-3340 ¶ 50). The court found this rule met here because the “purpose of the privatization bill is to generate a stream of revenue to, in this instance, help balance the budget,” which was “certainly a connected subject to an appropriations bill.” *Id.*

D. The Tenth District reversed and remanded for an evidentiary hearing to determine whether the 2012-2013 biennial budget bill was invalid both in its entirety and on a broad provision-by-provision basis.

On appeal, the Tenth District rejected all of Plaintiffs’ claims but the one alleging a one-subject violation. App. Op. ¶¶ 8-51. The court began its analysis with an overview of both the

one-subject rule and the 2012-2013 budget bill. It recounted that this Court treats the one-subject rule as mandatory, but that judicial enforcement remains limited and requires a manifestly gross and fraudulent violation. *Id.* ¶¶ 8-11. It also stated that, like similar bills, the budget bill was “over three thousand pages long, containing amendments to over one thousand sections.” *Id.* ¶ 12. While Plaintiffs challenged the entire bill, the court recognized that their argument focused on the prison-privatization provisions—R.C. 9.06 and Am. Sub. H.B. 153 § 753.10. *Id.* ¶ 13.

Applying the one-subject rule to the prison-privatization provisions, the court found that the provisions were not appropriations because they did “not set aside a sum of money for a public purpose.” *Id.* ¶ 15 (quoting *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900 ¶ 29). It also held that the provisions were not sufficiently related to appropriations. In doing so, it criticized the trial court for crediting *Ohio Roundtable* and *ComTech* over three competing cases—*State ex rel. Ohio Civil Service Employees Association v. State Employment Relations Board* (“*OCSEA*”), 104 Ohio St. 3d 122, 2004-Ohio-6363; *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1 (1999); and *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225 (1994). App. Op. ¶¶ 16-20. *Ohio Roundtable*, the court noted, preceded *OCSEA*, which “rejected the ‘notion that a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because other provisions in the bill also impact the budget.’” App. Op. ¶ 20 (citation omitted).

The court found *OCSEA* controlling because Am. Sub. H.B. 153 § 753.10 “does not concern the acquisition of a revenue stream, but, instead, the contractual requirements for prison privatization.” *Id.* While “the sale of state prisons no doubt impacts the state budget in some fashion,” the court continued, “allowing them to lawfully be included in an appropriations bill would ‘render[] the one-subject rule meaningless in the context of appropriations bills because

virtually any statute arguably impacts the state budget, even if only tenuously.” *Id.* (citation omitted). The court added that the amendments to R.C. 9.06 and Am. Sub. H.B. 153 § 753.10 were “significant and substantive,” but were little more than “riders” because they made up only twenty pages of the lengthy bill. *Id.* ¶ 21.

The court finished its specific discussion of the prison-privatization provisions by examining “other factors.” *Id.* ¶ 22. It suggested that the measures were “similarly expansive in scope to the school voucher program” invalidated in *Simmons-Harris* and likely more expansive in scope than the collective-bargaining provision rejected in *OCSEA*. *Id.* It also saw “no rational reason” for including the prison-privatization provisions in a budget bill, “suggesting that the combination was for tactical reasons” unrelated to balancing the budget. *Id.*

The court then turned to a much broader discussion. It noted that Plaintiffs’ complaint cited a host of other allegedly disjointed provisions in Am. Sub. H.B. 153 to support their claim that the *entire* bill was unconstitutional. *Id.* ¶ 23. These broad allegations, the court found, “complied with the notice-pleading requirements in Civ.R. 8(A).” *Id.* The court concluded that the trial court must “hold[] an evidentiary hearing to determine whether the bill in question had only one subject.” *Id.* ¶ 24. It ordered a provision-by-provision approach: “If, after holding an evidentiary hearing, the trial court finds any provisions constitute a manifestly gross or fraudulent violation of the one-subject rule, such that the provisions bear no common purpose or relationship with the budget-related items and give rise to an inference of logrolling, the court must sever the offending provisions” from the rest of the bill. *Id.*

ARGUMENT

State Appellants' Proposition of Law 1:

Provisions in a biennial budget bill that authorize state agencies to raise specific types of revenue do not violate the Ohio Constitution's one-subject rule merely because they set the terms by which the state agencies may do so.

The Constitution provides: “No bill shall contain more than one subject, which shall be clearly expressed in its title.” Ohio Const. art. II, § 15(D). This case is as easy as they come under this rule: prison sales have an obvious connection to appropriations because they generate part of the funds for those appropriations. Yet, because this Court sets statewide legal rules when it decides cases, it is useful to explore the one-subject rule in more depth. For that reason, the State Defendants first explain why the Court has correctly recognized that the judiciary must give the General Assembly “great latitude” to enact comprehensive legislation in a single bill. *See* Part A. That traditional deference shows that, in the appropriations context, the General Assembly may include a provision within a bill so long as that provision could rationally—rather than just tenuously—affect the State’s budget and operations. *See* Part B. The prison-privatization provisions at issue here meet that deferential standard (and any other standard for that matter) because prison sales generate revenue and private operations reduce spending. *See* Part C. The Tenth District’s contrary holding, by comparison, fails to accord the General Assembly the deference it is due when seeking to balance the budget. *See* Part D.

A. The judiciary’s one-subject review must give the General Assembly wide latitude to determine whether different provisions within a bill address a central “subject.”

For the reasons explained below, the specific one-subject challenge in this case would fail under almost any standard of review because revenue-raising provisions have a direct—not merely a rational or debatable—connection to the budget. Yet this case requires the Court to decide on the one-subject test that should apply for *any* provision within the recurring biennial

“budget” or “appropriation” bills. And the Tenth District’s surprising decision that revenues have nothing at all to do with the budget can be explained largely by its merely citing, and then ignoring, this Court’s repeated calls for deference. The Court should thus take this opportunity to reaffirm how deferential courts must be in reviewing one-subject challenges, and to remind lower courts that the special situation of budget bills involves more, not less, deference.

The great deference that this Court has provided the General Assembly under the one-subject rule arises from: (1) the usual standard of judicial review for all legislative enactments; (2) the need for heightened one-subject deference due to the absence of neutral standards to guide the one-subject inquiry; (3) this Court’s hands-off attitude toward the one-subject rule for most of the rule’s lengthy history; and (4) the one-subject rule’s general purpose.

1. The usual deferential standard of review for all constitutional challenges applies to the one-subject rule.

Challenges to laws under the one-subject rule, like challenges to laws under any constitutional provision, trigger the judiciary’s usual deferential rules. All “[s]tatutes are presumed to be constitutional unless shown beyond a reasonable doubt to violate a constitutional provision.” *Beagle v. Walden*, 78 Ohio St. 3d 59, 61 (1997) (citation omitted). Thus, a court may refuse to enforce legislation only if it concludes “that the legislation and constitutional provisions are clearly incompatible.” *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 syl. ¶ 1 (1955). This deferential standard has represented a critical “check” on the judiciary under the Ohio Constitution’s separation of powers since its adoption in 1851. *See Cent. Ohio Transit Auth. v. Transp. Workers Union of Am.*, 37 Ohio St. 3d 56, 62 (1988); *see also Cincinnati, Wilmington & Zanesville R.R. v. Comm’rs of Clinton Cnty.*, 1 Ohio St. 77, 82-83 (1852) (“It is never to be forgotten, that the presumption is always in favor of the validity of the

law; and it is only when manifest assumption of authority, and clear incompatibility between the constitution and the law appear, that the judicial power can refuse to execute it.”).

2. The one-subject rule requires heightened deference given the impossibility of establishing neutral one-subject guidelines.

A healthy layer of special one-subject deference sits on top of this general standard. The Court’s role in policing the one-subject rule—as compared to, say, its role in policing the Free Speech Clause—is “limited.” *State v. Bloomer*, 122 Ohio St. 3d 200, 2009-Ohio-2462 ¶ 48 (citation omitted). “To avoid interfering with the legislative process,” the Court “must afford the General Assembly great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject.” *Id.* (quoting *State ex rel. Ohio Civ. Serv. Emps. Ass’n v. State Emp’t Relations Bd.* (“OCSEA”), 104 Ohio St. 3d 122, 2004-Ohio-6363 ¶ 27).

This great legislative latitude follows from the difficulty—some would say the impossibility—of setting neutral standards under the one-subject rule. In most cases, the question whether a bill embraces more than one “subject” hinges on the level of generality at which a court defines the “subject.” The broader the level of generality at which a court defines the “subject” (e.g., “criminal law”), the more leeway the General Assembly has to include distinct provisions within a bill; the narrower the level of generality (e.g., “murder law”), the closer connection that separate provisions must have. *See State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 499 (1999). “[B]y its very nature,” in other words, “the permissible content of a ‘subject’ is infinitely and essentially malleable.” Daniel H. Lowenstein, *Initiatives & the New Single Subject Rule*, 1 Elec. L.J. 35, 47 (2002).

The Court's cases themselves recognize that the validity of a provision may turn on how the Court defines the "subject" of the bill in which it sits. Take *Bloomer*. It considered whether a bill violated the one-subject rule because the bill contained *both* provisions addressing the sealing of juvenile court records *and* provisions addressing adult post-release control. See 2009-Ohio-2462 ¶¶ 10, 46. The Court upheld the bill by defining the subject as "the rehabilitation and reintegration of offenders into society." *Id.* ¶ 53. It found that "postrelease control and the sealing of juvenile records share a common relationship" to this subject "because both concern the rehabilitation of persons who have violated Ohio's criminal laws and their reintegration into society." *Id.* ¶ 55. If, however, the Court had defined the "subject" more narrowly—as only "criminal laws"—the Court may have come out the other way because it had "previously characterized juvenile delinquency proceedings as civil in nature." *Id.* ¶ 54.

Now compare *Bloomer* with *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225 (1994). *AFL-CIO* concerned an act that (1) contained workers' compensation provisions; (2) created a statutory intentional-tort claim for employees against employers; and (3) added an exception to the child-labor laws for children in the entertainment industry. 69 Ohio St. 3d at 228. The Court struck down the intentional-tort provision and the exemption to the child-labor laws, but upheld the remainder of the law. See *id.* at 228-30. In doing so, the Court defined the subject as "workers' compensation," holding that the intentional-tort provision and child-labor exemption do "not in any way touch upon the laws related to workers' compensation." *Id.* at 230. If, however, the Court had defined the "subject" at a higher level—perhaps "labor and employment laws"—these different topics had a common employment-based thread. See *id.* (recognizing that the child-labor exemption "[i]n a broad sense" "addresses the area of

employment, an area also addressed by the workers' compensation laws"); *cf. id.* at 248 (Moyer, C.J., concurring and dissenting) (identifying the "common theme of employment").

These cases show that the chameleon-like word "subject" has no objective meaning, so courts have recognized that they cannot establish neutral rules to identify the constitutionally "proper" level of generality at which to define a subject. One has said that "[s]uch a formula may well be impossible to craft, and might be undesirable even if it were possible." *Gregory v. Shurtleff*, 299 P.3d 1098, 1113 (Utah 2013). Another has noted that "[n]othing in the constitution specifically instructs the court about the level of generality it should use in characterizing the subject of a bill." *City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 491 N.W.2d 484, 494 (Wis. 1992); *see also* John G. Matsusaka & Richard L. Hasen, *Aggressive Enforcement of the Single Subject Rule*, 9 Elec. L.J. 399, 418 (2010). For its part, this Court has only generically stated that "[t]here comes a point past which a denominated subject becomes so strained in its effort to cohere diverse matter as to lose its legitimacy as such." *Sheward*, 86 Ohio St. 3d at 499. But where is the breaking point? It falls somewhere close to a "single enactment which endeavors to legislate on all matters under the heading of 'law.'" *Id.*

The question becomes what to do in the face of this one-subject uncertainty. The Court has provided the answer. The inability to provide neutral guidelines—when combined with the general refusal to invalidate legislation except if its unconstitutionality has been clearly shown, *see Beagle*, 78 Ohio St. 3d at 61—amplifies the deference due the General Assembly. Thus, a one-subject violation requires that the inclusion of a provision within a bill be not just *irrational*, but also "*manifestly gross and fraudulent.*" *In re Nowak*, 104 Ohio St. 3d 466, 2004-Ohio-6777 syl. ¶ 1 & ¶ 44 (emphasis added). This demanding standard shows that the deference due the General Assembly under the one-subject rule even surpasses the deference due legislatures under

the Equal Protection Clause’s rational-basis test—the test known as the “paradigm of judicial restraint.” *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 314 (1993). The Court’s one-subject standard perhaps has provided a new paradigm.

3. The Court’s historical treatment of the one-subject rule confirms the great deference due the General Assembly.

The Court’s history with the one-subject rule confirms that the judiciary owes perhaps the most deference under that constitutional provision. The 1851 Ohio Constitution first included a one-subject rule. Within five years, the Court interpreted the rule as supplying a “directory,” not a “mandatory,” command—meaning that only the legislature, not the judiciary, bore responsibility to enforce it. *See Pim v. Nicholson*, 6 Ohio St. 176, 180 (1856). During the 1873-74 Constitutional Convention, certain delegates proposed amendments making the one-subject rule judicially enforceable, but the convention voted down those proposals. *See John Kulewicz, The History of the One-Subject Rule of the Ohio Constitution*, 45 Clev. St. L. Rev. 591, 595-601 (1997). From then until 1984 “in a long line of unbroken cases,” the Court rejected one-subject challenges due to the rule’s directory nature. *State ex rel. Dix v. Celeste*, 11 Ohio St. 3d 141, 143 (1984); *see State ex rel. Ach v. Braden*, 125 Ohio St. 307, 317 (1932); *Vought v. Columbus, Hocking Valley & Athens R.R.*, 58 Ohio St. 123, 156 (1898); *Oshe v. State*, 37 Ohio St. 494, 500 (1882); *State ex rel. Attorney Gen. v. Covington*, 29 Ohio St. 102, 116-17 (1876).

The Court’s traditional rationales for treating the one-subject rule as “directory” show that it exhibits the hallmarks of (in the words of the federal courts) a non-justiciable “political question.” *See Vieth v. Jubelirer*, 541 U.S. 267, 277-78 (2004) (plurality op.); *Nixon v. United States*, 506 U.S. 224, 228-29 (1993). For one thing, the Court (and the delegates who kept the one-subject rule “directory” during the 1873-74 Constitutional Convention) expressed concern with the subjective nature of the one-subject inquiry, emphasizing that “[s]uch a question would

be decided according to the mental precision and mental discipline of each justice of the peace and judge.” *Pim*, 6 Ohio St. at 180; see Kulewicz, 45 Clev. St. L. Rev. at 597-601. This lack of “judicially discernible and manageable standards” to enforce a constitutional provision provides a textbook case for finding the provision non-justiciable. *Vieth*, 541 U.S. at 281 (plurality op.).

For another, the Court cited the one-subject rule’s focus on a “bill” rather than a “law.” That text illustrated that the provision “was incorporated into the constitution, for the purpose of making it a permanent rule of the two houses, and to operate only upon bills in their progress through the general assembly” rather than upon acts that have emerged from the General Assembly and passed into law. *Oshe*, 37 Ohio St. at 500. This additional rationale—one that showed “a textually demonstrable constitutional commitment of the issue to a coordinate political department”—provides another classic reason for finding a constitutional provision non-justiciable. *Nixon*, 506 U.S. at 228 (citation omitted).

To be sure, in recent decades, the Court has switched gears by finding the rule mandatory and so judicially enforceable. *Nowak*, 2004-Ohio-6777 ¶ 54. But the one-subject rule’s hundred-year judicial slumber remains relevant for determining how courts should enforce the awakened limit today. That the rule teeters on the edge between a justiciable question (for both the courts and the legislature) and a political question (for the legislature alone) confirms the caution that courts must exercise when litigants present them with one-subject challenges.

4. The one-subject rule’s purpose cements the need for deference.

Generally speaking, “[t]he primary and universally recognized purpose of [one-subject] provisions is to prevent logrolling”—where one legislator (Legislator A) agrees to vote for the legislation introduced by another (Legislator B) not because of the legislation’s merits, but in exchange for Legislator B voting for Legislator A’s different pet project. *Dix*, 11 Ohio St. 3d at 142. This “anti-logrolling” purpose confirms the need for judicial deference.

For starters, the anti-logrolling purpose offers courts no way out of the conundrum that judicial inquiry in this area lacks objective baselines. If anything, the purpose adds to the conundrum. Laws are made up of many compromises among competing values (consider, for example, a law that creates a new cause of action but passes only after a legislator agrees to vote for it with a damages cap). See *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (“Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice.”). That is why the Court has “strongly emphasized that the constitutional mandate that every bill shall have but one subject was imposed to facilitate orderly legislative procedure, *not* to hamper or impede it.” *Dix*, 11 Ohio St. 3d at 143.

Judicial inquiry into all laws for evidence of logrolling would impede, not facilitate, legislation. It would be impossible to weed out “bad” logrolling (compromises concerning different subjects) from “good” bargains (compromises concerning one subject). The difference is one of degree, not of kind. Cf. *Gregory*, 299 P.3d at 1114 (noting that “the line between forbidden ‘log-rolling’ and mere ‘horse-trading’ may be a fine one”). As a result, the Court has “emphatically reject[ed] [an] approach” that would tie a law’s validity to a court’s fact-finding that the law passed through logrolling. *Nowak*, 2004-Ohio-6777 ¶ 70. Such a test would create “a kind of entanglement with the legislative process that far exceeds any legitimate judicial function.” *Id.* ¶ 72. Because a purpose-based approach to the one-subject rule heightens the inquiry’s malleable nature, the rule’s anti-logrolling purpose reinforces the need for deference.

In addition, the one-subject rule already imposes a limitation on the General Assembly *broader* than the logrolling evil it seeks to prevent. As the Court has said, the rule “does not require evidence of fraud or logrolling beyond the unnatural combinations” in a bill. *Id.* ¶ 71. Because the rule’s language already exceeds its purpose, courts may apply a deferential one-

subject review without sacrificing that purpose. In other words, the one-subject rule differs from other constitutional rights that need judicially created “breathing space” to survive. *See Snyder v. Phelps*, 131 S. Ct. 1207, 1219 (2011) (First Amendment). The one-subject rule’s language itself incorporates “breathing space” for its anti-logrolling purpose. Additional judicial prophylaxes would be redundant—providing burdensome constraints on the legislative process with little more than superfluous anti-logrolling protections.

Finally, in the appropriations context, judicial policing of the one-subject rule will *never* serve a subsidiary purpose. By prohibiting logrolling, the rule “prevent[s] dilution of the governor’s veto power that would result if the legislation was saddled with irrelevant riders opposed to the governor.” 1A Sutherland Statutory Construction § 17:1 (7th ed. 2013); *see Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. 1997) (noting that the rule was designed “to insulate the governor from ‘take-it-or-leave-it’ choices when contemplating the use of the veto power”). Ohio’s governors will never face this “take-it-or-leave it” dilemma when determining whether to sign appropriation bills, because the Constitution gives them the right to “disapprove any item or items in” those bills. Ohio Const. art. II, § 16; *see State ex rel. Brown v. Ferguson*, 32 Ohio St. 2d 245, 253 (1972). This line-item-veto power likewise shows less of a need for courts to vigorously police the one-subject rule in the specific context of appropriation bills.

B. Given the need for broad legislative discretion, the Court should hold that the one-subject rule allows the General Assembly to include all matters in appropriation bills that could rationally—rather than just tenuously—affect the State’s budget.

The Court’s judicial-deference standards should guide any specific one-subject test that it adopts for budget bills. They show that the General Assembly may include all matters in appropriation bills that could rationally affect the state budget and operations. This standard adheres to the Court’s holding *both* that the “subject” should be defined broadly *and* that a provision within a bill need only have a rational, non-tenuous connection to this broad subject.

1. The Court should broadly define the “subject” in the appropriations context.

The Court should begin with the proper definition of the “subject” in the appropriations context. The “subject” for a typical biennial “budget” or “appropriation” bill will be *the state budget and operations*—i.e., ensuring that the General Assembly has met its constitutional duty to match the expected “costs” of the State’s operations over the coming two years with its expected “revenues” for those years. *See City of Riverside v. State*, 190 Ohio App. 3d 765, 2010-Ohio-5868 ¶ 44 (10th Dist.) (French, J.). Three factors point to this broad definition.

First, this definition comports with the Court’s cases. The Court has defined the subject of appropriation bills broadly as “the operations of the state government,” *ComTech*, 59 Ohio St. 3d at 99, and thus has noted that those “bills, of necessity, encompass many items, all bound by the thread of appropriations,” *Simmons-Harris v. Goff*, 86 Ohio St. 3d 1, 16 (1999); *see Solon v. Martin*, 2008-Ohio-808 ¶¶ 22-23 (8th Dist.); *State ex rel. Ohio Roundtable v. Taft*, 2003-Ohio-3340 ¶ 48 (10th Dist.). Indeed, the state budget and operations fits well within the kind of broad subjects the Court has already approved, including, for example, “tort law,” *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶ 210, or “rehabilitation and reintegration of offenders into society,” *Bloomer*, 2009-Ohio-2462 ¶ 53. And this subject is a far cry from the subjects that the Court has rejected. It is nowhere near “legislative fine tuning of existing enactments,” *Nowak*, 2004-Ohio-6777 ¶ 60, or a “single enactment which endeavors to legislate on all matters under the heading of ‘law,’” *Sheward*, 86 Ohio St. 3d at 499.

Second, this definition rightly defers to the General Assembly. As the Court has noted, “in order to accord appropriate deference to the General Assembly in its law-making function, a subject for purposes of the one-subject rule is to be liberally construed as a classification of significant scope and generality.” *Id.* at 498. This liberal-construction canon allows a bill to “embrace[] more than one topic” because “it is the disunity of subject matter, rather than the

aggregation of topics, that causes a bill to violate the one-subject rule.” *Bloomer*, 2009-Ohio-2462 ¶ 49. Whether or not expenditures and revenues qualify as distinct “topics,” every Ohioan knows that they have a common relationship to the same “subject”—their budget.

Third, this definition “facilitate[s] orderly legislative procedure.” *Dix*, 11 Ohio St. 3d at 142. If the one-subject rule prohibited the General Assembly from including appropriations, spending cuts, and revenue generators in the same bill, it would hamstring legislative efforts to balance the state budget. It would, for example, be problematic to require the General Assembly to set appropriations based on anticipated revenue from a new revenue source, but to prohibit the General Assembly from adding the legislation implementing that new revenue source in the appropriation bill. If the revenue-related legislation failed after the appropriation bill passed, the General Assembly would have unconstitutionally adopted an unbalanced budget. Balancing the budget requires compromises on both sides of the equation. Requiring those compromises to take place across manifold bills simply adds another hurdle to the legislature’s already onerous task of balancing the State’s budget every two years.

2. The Court should allow for a broad “connection” between the general budgetary subject and any particular provision in an appropriation bill.

After defining the “subject,” the Court must identify the “connection” that a provision within a bill must have to that “subject.” In the appropriations context, the Court should hold that a provision passes muster if a court can conclude that the provision could *rationaly*—rather than just *tenuously*—affect either the revenue side or the expenditure side of the State’s budget and operations. Two factors justify this lenient, but not toothless, standard.

First, the rational-basis test best reconciles this Court’s cases. On the one hand, the Court has said a provision satisfies the one-subject rule so long as a court can identify “practical, *rational*, or legitimate reasons” for including the provision in the bill. *Dix*, 11 Ohio St. 3d at 145

(emphasis added); see *Beagle*, 78 Ohio St. 3d at 62. Appropriations, for example, can rationally be included in a bill establishing substantive programs and agencies because the expenditures “fund[] directly the operations of programs, agencies, and matters described elsewhere in the bill.” *Dix*, 11 Ohio St. 3d at 146. On the other hand, the Court has said that a provision does not satisfy the rule if it has only a “*tenuous*[]” connection to the bill’s subject. *OCSEA*, 2004-Ohio-6363 ¶ 33 (emphasis added). Under this standard, for example, the General Assembly cannot put a provision about “local option” elections for *alcohol sales* in a bill about the *courts* on the ground that they both concern the general subject of “elections.” “To say that laws relating to the state judiciary and local option have elections in common is akin to saying that securities laws and drug trafficking penalties have sales in common—the connection is merely coincidental.” *State ex rel. Hinkle v. Franklin Cnty. Bd. of Elections*, 62 Ohio St. 3d 145, 148 (1991). Such a tenuous connection does not satisfy the one-subject rule.

Second, the rational-basis standard best implements the deference due the General Assembly on this backend of the one-subject inquiry. Two principles applicable to the Equal Protection Clause’s rational-basis test—the twin of the one-subject rule’s test—show this fact. Under the first principle, the legislature need *not* prove a provision’s rationality with evidence. To the contrary, “[a] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data.” *Am. Ass’n of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.*, 87 Ohio St. 3d 55, 58 (1999) (citation omitted). As applied in the one-subject context, this standard allows courts to “rationally speculate” about how separate provisions tie to a general subject without evidence proving this connection (e.g., a court can discern that adult post-release control and sealing of juvenile court records relate to a general “rehabilitation” subject). See *Bloomer*, 2009-Ohio-2462 ¶¶ 53-56.

Under the second principle, the legislature need not show the required connection “with mathematical nicety.” *Pickaway Cnty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St. 3d 104, 2010-Ohio-4908 ¶ 32 (citation omitted). Generalizations are enough. *See id.* This aspect of equal-protection, rational-basis review also has relevance in the one-subject context. That the legislature can paint with a broad brush allows it to show the connection between a bill’s separate topics from a bird’s-eye view, not from a specific view that analyzes *each and every* provision within two or more topics. The Court, for example, rejected a one-subject challenge to a provision in a bill addressing *both* “financial responsibility laws” (setting forth insurance-coverage requirements for Ohio drivers) *and* “uninsured/underinsured motorist coverage” (providing insurance for drivers when tortfeasors lack adequate coverage) because these topics shared the general subject of “reduc[ing] the dangers posed by uninsured and underinsured motorists.” *Beagle*, 78 Ohio St. 3d at 61-62. The Court did so even though the *specific* provision at issue (which allowed insurers to reduce uninsured/underinsured coverage) seemed to be at cross purposes with this general subject. *Cf. id.* at 65 (Pfeifer, J., concurring) (noting that the challenged provision “was logically inconsistent with the General Assembly’s ongoing attempt to ensure that all drivers in this state are covered by insurance”).

3. Specific examples in the appropriations context illustrate how this rational-basis test applies in practice.

Under these standards, provisions in appropriation or budget bills fall along a spectrum. At one end are provisions that directly affect revenues or expenditures. *ComTech* provides the best example. There, a lengthy appropriation bill contained, among other things, a new sales tax on data-processing and computer services. *See* 59 Ohio St. 3d at 97. Even though the bill “contain[ed] a variety of topics,” this Court could not “conclude that [the bill] is a manifestly gross and fraudulent violation of the one-subject rule.” *Id.* at 99. The “appropriations bill” dealt

“with the operations of the state government,” and could “contain a new object of taxation because the tax funds government operations described elsewhere in the Act.” *Id.*; see also *Ohio Roundtable*, 2003-Ohio-3340 ¶¶ 49-50.

Most provisions, by comparison, fall in the middle. They do not *directly* address expenditures or revenues but could *rationally* affect those items. The Tenth District’s decision in *City of Riverside* provides a good example. That case involved a provision in “the 2008-2009 biennial budget bill” prohibiting the city from taxing “the income of nonresident civilian employees and contractors working at the Wright-Patterson Air Force Base.” 2010-Ohio-5868 ¶ 4. The city argued that any connection between the *state* budget and *local*-taxation limits was “too tenuous to withstand one-subject scrutiny.” *Id.* ¶ 41. The court disagreed. The bill altered the way to calculate state appropriations to local governments—tying the appropriation amount to the amount of the city’s income-tax revenue—so the decrease in the city’s income-tax revenue could affect state expenditures for local governments. *Id.* ¶¶ 51-52. Notably, moreover, “[r]estricting funding is as much a part of an appropriations bill as granting funds.” *Cuyahoga Cnty. Veterans Servs. Comm’n v. State*, 159 Ohio App. 3d 276, 2004-Ohio-6124 ¶ 14 (10th Dist.) (holding that substantive changes to “county veterans service commissions” comported with one-subject rule because changes could rationally reduce state spending); see *Solon*, 2008-Ohio-808 ¶ 22 (upholding provision prohibiting courts from providing limiting driving privileges to individuals with suspended driver’s licenses because of connection to federal grants).

At the other end of the spectrum are provisions that could only tenuously affect the state budget. *OCSEA* provides the best example. It involved a “budget corrections bill” that, among other things, clarified that employees of the Ohio School Facilities Commission (OSFC) did not qualify as “public employees” entitled to bargain collectively. 2004-Ohio-6363 ¶¶ 3-4. The

Court held that this provision did not bear a rational relationship to the bill. *Id.* ¶¶ 32-35. It rejected the “the notion that a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because other provisions in the bill also impact the budget.” *Id.* ¶ 33. To allow such an argument would make the one-subject rule meaningless because creative lawyers could show how any law “arguably impacts the state budget, even if only tenuously.” *Id.* The State itself failed to provide an explanation how the provision “affect[ed] the state budget, aside from the general averment that the amendment ‘is related to the pay schedules applicable to [employees of OSFC].’” *Id.* ¶ 34. For its part, the Court could not deduce “any explanation whatever as to the manner in which the [provision] will clarify or alter the appropriation of state funds.” *Id.*; see *Riverside*, 2010-Ohio-5868 ¶ 46.

C. The 2013-2014 biennial budget bill’s prison-privatization provisions could rationally affect—indeed, have directly affected—the state budget and operations.

Applying this one-subject test here, this case is easy. Because the case concerns the 2012-2013 biennial budget bill, the bill’s relevant “subject” can reasonably be described as ensuring that the spending in the bill over that two-year fiscal period for the State’s broad operations matches the State’s revenues. Both the prison-sale provisions and the private-operation provisions rationally relate to this subject; at the least, they are not so unconnected that their inclusion within the bill was a “gross” or “fraudulent” violation of the one-subject rule.

Prison-Sale Provisions. The bill’s prison-sale provisions introduced a new potential revenue source for the 2012-2013 Fiscal Years. Such a source of revenue is directly, not merely rationally, connected to the budget. See *Riverside*, 2010-Ohio-5868 ¶ 44. The provisions themselves express this close connection, because they contemplate that the sales would create additional revenue. That revenue would go into an adult and juvenile correctional facilities bond retirement fund to pay off any outstanding bonds. Am. Sub. H.B. 153 § 753.10(C)(8), (D)(8),

(E)(8), (F)(8), (G)(8). Any remaining revenue would then transfer to, among others, the general revenue fund to cover state spending. *See id.*; R.C. 5120.092. Nor can the prison-sale provisions be described as “tenuously” connected to revenue. The complaint concedes that the provisions, as a matter of undisputed fact, generated over \$72 million. Am. Compl. ¶¶ 1, 46 & Ex. 3. This connection—shown both by the law and by the facts—more than suffices.

The Court’s case law compels that conclusion. The Court has already held that the General Assembly may include a new tax in an appropriation bill. *See ComTech*, 59 Ohio St. 3d at 99. It would be incongruous for the judiciary to treat *tax increases* within appropriation bills as “good” budgetary compromises for one-subject purposes, but *alternative revenue generators* within those same bills as “bad” budgetary compromises. This concern with judicial intrusion on policy decisions illustrates why courts exercise care when reviewing a challenger’s one-subject arguments. *See Dix*, 11 Ohio St. 3d at 144-45. All too often, those arguments dress up mere disagreements with the General Assembly’s decisions in the garb of constitutional analysis.

If anything, the prison-sale provisions present the easiest possible case, much easier than *ComTech*. There, the General Assembly *permanently* placed a new tax in the Revised Code. The Department’s option to sell five prisons, by comparison, came with a built-in, two-year expiration date. Not coincidentally, the expiration date matched the 2012-2013 Fiscal Years. *See* Am. Sub. H.B. 153 § 753.10(C)(10), (D)(10), (E)(10), (F)(10), (G)(10). The prison-sale provisions thus were even more closely tied to balancing *this specific 2012-2013 budget* than the new tax in *ComTech*—a tax that would long outlast the budget years for which it had been introduced. This expiration date also distinguishes *Simmons-Harris*. There, the Court considered what it described as “leading-edge legislation”—a new school-voucher program. 86

Ohio St. 3d at 16. That program had been permanently placed within the Revised Code; it did not exist merely for the budget years at issue. *See id.*

Private-Operation Provisions. The biennial budget bill's private-operation provisions are also rationally connected to the state budget. As a condition for entering into private-operation contracts for the prisons, a private contractor had to "convincingly demonstrate" that it would operate the prison with "at least a five per cent savings." R.C. 9.06(A)(4). These contracts, in other words, were designed to reduce the Department's expenditures over the 2012-2013 Fiscal Years. Because "[r]estricting funding is as much a part of an appropriations bill as granting funds," *Cuyahoga Cnty. Veterans Servs. Comm'n*, 2004-Ohio-6124 ¶ 14, the private-operation provisions rationally assisted the General Assembly in balancing the budget.

In this respect, this case is on all fours with the Eighth District's *Solon* decision. There, the General Assembly placed a substantive provision governing driver's licenses within a biennial budget bill because the federal government required the States to add that provision or lose 5% of their federal highway funds. *See* 2008-Ohio-808 ¶¶ 22-23. Here, the General Assembly placed a substantive private-operation provision in the biennial budget bill to shave off 5% from what it would have otherwise cost the Department to operate a facility. In each case, a statute expressly illustrated the substantive provision's budgetary connection. In each case, therefore, the General Assembly could adopt the provision in a budget bill.

The General Assembly's amendments to the private-operation provisions, moreover, cannot be considered the "creation of a substantive program" in a budget bill—as occurred with the school-voucher program in *Simmons-Harris*. *See* 86 Ohio St. 3d at 17. To the contrary, the General Assembly first passed legislation allowing for the private operation of prisons in 1995. *See* 1995 Ohio Laws 900, 906-11 (Am. Sub. H.B. 117). By 2011, such legislation had become

mundane, not “leading-edge.” *Simmons-Harris*, 86 Ohio St. 3d at 16. All the budget bill did was ensure that the Department could rely on the existing provisions for the five specified prisons. See Am. Sub. H.B. 153 § 753.10(B)(4). Indeed, that inclusion was arguably unnecessary, because the Revised Code already allowed the Department to “contract for the private operation and management of any other facility under this section.” R.C. 9.06(A)(1).

Two final points applicable to *both* the prison-sale *and* the private-operation provisions further illustrate that they have a direct connection to the budget.

First, the prison-privatization provisions cannot be viewed as a “rider” smuggled into a general bill to guarantee passage without legislative deliberation. *Cf. Simmons-Harris*, 86 Ohio St. 3d at 16 (finding school-voucher program to be “rider”). Before the 2012-2013 budget was even introduced, media outlets had notified the public that the bill would balance the budget partially through prison-privatization provisions. See Alan Johnson, *5 Prisons to Be Put on Block by State*, Columbus Dispatch, Mar. 15, 2011, at A1, available at 2011 WLNR 5111906; *In-depth Coverage on Prison Funding*, Dayton Daily News, Mar. 11, 2011, at A6, available at 2011 WLNR 5112789; Frank Lewis, *Kasich Looking to Privatize Prisons, Turnpike*, Portsmouth Daily Times, Feb. 15, 2011, available at 2011 WLNR 2995592. And the media continued to identify these prison-privatization provisions throughout the General Assembly’s deliberative process. See, e.g., Aaron Marshall, *State Senate OKs its Budget Bill on Party-Line Vote*, Cleveland Plain Dealer, June 9, 2011, at A1, available at 2011 WLNR 11690116; Jessica Cuffman, *Private Prisons See Opposition*, Marion Star, May 30, 2011, available at 2011 WLNR 10774240; Laura A. Bischoff, *House Passes State Budget*, Dayton Daily News, May 6, 2011, at A1, available at 2011 WLNR 9295819. The prison-privatization provisions were a part of the 2012-2013 budget debate; they did not merely ride along with that debate.

Second, legislative history confirms the prison-privatization provisions' budgetary connection. *See Meeks v. Papadopoulos*, 62 Ohio St. 2d 187, 191 (1980) (relying on legislative history from Legislative Service Commission on a motion to dismiss). The General Assembly's appropriations to the Department, for example, assumed that the private-operation provisions would reduce some \$9.3 million from the Department's biennial budget. *See* Legislative Service Commission, *Redbook* at 6 (Apr. 2011), available at <http://www.lsc.state.oh.us/fiscal/redbooks129/drc.pdf>. Similarly, the amount estimated to be available for the budget assumed that the prison-sale provisions would generate \$50 million. *See id.*; OBM, *State of Ohio Executive Budget Fiscal Years 2012 & 2013*, at B-27 (Mar. 2011), available at <http://media.obm.ohio.gov/OBM/Budget/Documents/operating/fy-12-13/bluebook/Book1-Budget-FY2012-2013.pdf>. In short, both the biennial budget bill's plain language and its legislative history confirm that its prison-privatization provisions directly affected budgetary decisions for the 2012-2013 budget. Again, this shows this is the easiest case—going well beyond the rational-basis connection to state budget and operations.

D. The Tenth District's contrary analysis failed to properly defer to the General Assembly's budgetary choices.

The Tenth District mistakenly reached a contrary holding. It engaged in a rigorous—not a deferential—review of the 2012-2013 biennial budget bill's prison-privatization provisions, and thus exceeded the judiciary's "limited" role in policing the one-subject rule.

1. The Tenth District mistakenly defined the budget bill's "subject."

As an initial matter, the Tenth District defined the bill's "subject" too narrowly. *See* App. Op. ¶ 15. It looked only at the *expenditure* side of the budgetary equation rather than the *revenue* side, stating that the bill's subject was only "appropriations" and defining an "appropriation bill" as a "measure before a legislative body which authorizes the expenditure of public moneys and

stipulating the amount, manner, and purpose of the various items of expenditure.” *Id.* (quoting *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900 ¶ 28). This narrow view cannot stand. To begin with, it conflicts with the great weight of precedent. In *ComTech*, for example, this Court defined the subject of an “appropriations bill” broadly, noting that it “deals with the operations of the state government.” 59 Ohio St. 3d at 99. Recognizing this Court’s prior teachings on the topic, therefore, the district courts have repeatedly recognized that “biennial budget bills” “address[] the complex, but single subject of the state budget.” *Solon*, 2008-Ohio-808 ¶¶ 22-23; *see Riverside*, 2010-Ohio-5868 ¶ 44. Indeed, if an appropriation bill could address only “spending,” a “tax” could not be placed in such a bill.

Apart from precedent, the Tenth District’s view of the relevant subject provides a striking example why courts need to exercise caution in the one-subject arena. Here, the Tenth District defined the subject as “appropriations,” and said that a prison sale (which obviously generates money for the State) does not relate to expenditures. *See App. Op.* ¶ 15. In other cases, by contrast, the Tenth District held that “*revenues and expenditures* compose the core of an appropriations bill.” *Riverside*, 2010-Ohio-5868 ¶ 44 (emphasis added). Unlike this case, these other cases previously upheld “the introduction of a stream of revenue” in such bills. *Ohio Roundtable*, 2003-Ohio-3340 ¶ 50. This inconsistent approach to identifying the level of generality at which to define a budget bill’s “subject” shows the absence of any objective baselines for doing so—and thus the real risks of arbitrary results under the one-subject rule. Haphazard application of the one-subject rule should not thwart important legislative policies. Instead, it bears repeating that “a subject for purposes of the one-subject rule . . . [must] be liberally construed as a classification of significant scope and generality.” *Sheward*, 86 Ohio

St. 3d at 498. The Tenth District’s past deferential approach to defining the relevant subject, not its current constrained approach, correctly applies the one-subject rule.

LetOhioVote—the case on which the Tenth District relied here—confirms its error. *See* App. Op. ¶ 15. That decision interpreted the Ohio Constitution’s *right-of-referendum* provision, not its *one-subject* provision. Specifically, *LetOhioVote* analyzed the 2010-2011 biennial budget bill, which included a new program authorizing the State Lottery Commission to operate video-lottery-terminal games at horse tracks. 2009-Ohio-4900 ¶ 3. The bill purported to exempt these provisions from the Constitution’s right-of-referendum requirement under its “appropriation” exception. *Id.* ¶ 4. The relator argued that the substantive program did not qualify for that exception. This Court agreed. It held that the exception must be “strictly” construed, and a law must be “*plainly and persuasively included*” within it. *Id.* ¶ 24 (citation omitted). As a result, the Court rejected the argument that the exception applied *not only* to an appropriation itself *but also* to “laws that relate to appropriations.” *Id.* ¶¶ 32-35. The exception did not cover non-appropriations no matter how “inextricably intertwined” they were with an appropriation. *See id.*

The one-subject rule, by contrast, has never been “strictly” construed. Quite the opposite. It has been “liberally construed” so as not to “hamper the legislature” or “embarrass honest legislation.” *Nowak*, 2004-Ohio-6777 ¶ 46 (citation omitted). It allows for a much *broader* connection between provisions than the appropriation exception. Whereas the latter does not even reach items *inextricably tied* to appropriations, *see LetOhioVote*, 2009-Ohio-4900 ¶ 35, the former permits all laws *rationaly related* to appropriations, *see Beagle*, 78 Ohio St. 3d at 62. Thus, that revenue-generating provisions do not in a strict sense qualify as “appropriations” within the meaning of the right to referendum says nothing about whether the one-subject rule permits their inclusion in an appropriation bill.

One final point. If the Tenth District correctly found that the same standard applies to both the right-of-referendum exception and the one-subject rule, the relator in *LetOhioVote* (or in any similar referendum case) would be foolish to invoke the right of referendum, when the relator could have achieved an automatic victory with a one-subject suit. Rather than arguing for a *procedural* right to referendum, the relator should have asserted a *substantive* one-subject claim—which could wipe out the gambling provisions without the need for a vote. And those gambling provisions (as amended in 2012) remain on the books to this day (the referendum never happened). *See, e.g.,* R.C. 3770.21. The Tenth District’s decision calls them into question. *LetOhioVote*, by contrast, shows that this Court’s historical one-subject deference remains politically neutral—it applies to whomever resides in the Governor’s mansion or votes in the General Assembly.

2. The Tenth District required too close of a connection between a particular provision and a bill’s general subject.

The Tenth District also interpreted the connection that a particular provision must have to the bill’s subject too narrowly. It, at most, paid lip service to this Court’s admonitions that a provision satisfies the one-subject rule if a court can identify “practical, rational, or legitimate reasons” for including the provision within the bill, *Dix*, 11 Ohio St. 3d at 145, and that a court cannot invalidate a provision unless such an inclusion amounts to a “manifestly gross and fraudulent violation,” *Nowak*, 2004-Ohio-6777 syl. ¶ 1. That is shown by the court’s analysis.

First, the Tenth District held that the prison-privatization provisions do “not concern the acquisition of a revenue stream, but, instead, the contractual requirements for prison privatization.” App. Op. ¶ 20. This view misses the forest for the trees, and, by doing so, overlooks a principal component of rational-basis review. “[C]ourts are compelled under rational-basis review to accept a legislature’s generalizations even when there is an imperfect fit

between means and ends.” *Heller v. Doe*, 509 U.S. 312, 321 (1993). In other words, whether or not every *specific* prison-privatization provision can be shown to affect the state budget, there can be no dispute that the prison-sale and private-operation “topics”—as a *general* matter—affect both state revenues (they directly increase them) and state expenditures (they directly decrease them). If generalizations suffice, they suffice here. *See id.*

Indeed, this Court has never taken the Tenth District’s detail-oriented approach to the one-subject rule. In *Bloomer*, for example, the Court held that two *general* topics within a bill (adult post-release control and sealing of juvenile court records) were sufficiently related to the subject of “rehabilitation.” *See* 2009-Ohio-2462 ¶¶ 55-56. The Court did not ask whether each and every provision within either of those two topics—for example, the provision within the bill *excepting* juveniles convicted of aggravated murder from the sealing requirement, *see* R.C. 2151.356(A)—related to the general subject. Likewise, in *ComTech* (the case involving the new tax), the Court gave no indication that it would have reached a different result had the General Assembly included provisions detailing the methods by which the Department of Taxation should enforce the tax. *See* 59 Ohio St. 3d at 99. As long as the general topic relates to the bill’s overarching subject, courts need not analyze each and every provision within that topic.

Second, the Tenth District rightly conceded that “the sale of state prisons no doubt impacts the state budget in some fashion,” but suggested that such direct impacts do not suffice. App. Op. ¶ 20. Relying on this Court’s *OCSEA* decision, it held that allowing those prison sales “to lawfully be included in an appropriations bill would ‘render[] the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously.’” *Id.* (quoting *OCSEA*, 2004-Ohio-6363 ¶ 33). But there is a big difference between *no-doubt* impacts and *tenuous* impacts. If the Tenth District

correctly interpreted *OCSEA*, it would mean that substantive provisions with the most direct effects on the budget—such as the tax in *ComTech*—could not be included in budget bills. That interprets *OCSEA*'s garden-variety application of the rule as creating a one-subject revolution.

OCSEA, instead, should be interpreted much more narrowly—for the simple proposition that a connection to a general subject must be more than tenuous. The language in *OCSEA* on which the Tenth District relied, in other words, merely accounts for a judge's ability to hypothesize the financial impacts of almost any law; as one famous tort case noted, "there are clear judicial days on which a court can foresee forever." *Thing v. La Chusa*, 771 P.2d 814, 830 (Cal. 1989). But those tenuous connections do not suffice. Neither the State nor the Court in *OCSEA* could identify any *rational* budgetary impacts from the collective-bargaining provision. See 2004-Ohio-6363 ¶43. The tax provisions in *ComTech* and the prison-privatization provisions in this case, by contrast, have direct impacts. That is well more than enough.

Third, the Tenth District considered the prison-privatization provisions to be mere riders solely because they amounted to only twenty pages of the over 3,000-page bill. App. Op. ¶21. It failed to explain why the length of a provision correlates with its "rider" status. Such a correlation is not at all obvious. Most of the budget bill's sections appropriating funds to state agencies took up far less space. Section 279.10, for example, appropriated funds to the Ohio Environmental Protection Agency in less than two pages; § 217.10 provided appropriations to the ARC Architects Board in all of five lines. Yet no one would consider these appropriations to be riders on the bill given their short length. The length of the prison-privatization provisions likewise provides no indication that they were riders. In all events, the Tenth District's analysis in this regard was beside the point. Because the prison-privatization provisions rationally relate

to the bill’s budgetary subject, the one-subject rule has been satisfied. As a result, the provisions could have been included in the bill even if they had been “riders.”

State Appellants’ Proposition of Law 2:

As long as a biennial budget bill, on its face, has a common purpose, courts should not permit evidentiary hearings to attack that bill in its entirety through an intrusive provision-by-provision analysis under the one-subject rule.

This Court has long held that a bill should not be invalidated *in its entirety* under the one-subject rule if it has a “primary” subject. *See* Part A. That rule will always be met for biennial budget bills—which have a core subject of revenues and expenditures—so this Court should reject Plaintiffs’ full-scale attack on the budget bill in this case. *See* Part B. The Tenth District’s claim that the bill contains some provisions allegedly unrelated to that subject, by contrast, provides no basis for invalidating the bill in its entirety or examining the bill on a provision-by-provision basis in search of potential deviations from its budgetary subject. *See* Part C.

A. A bill that has a primary subject should not be invalidated in its entirety under the one-subject rule even if some provisions do not rationally relate to that subject.

As a general matter, so long as a challenged bill has a primary subject, courts should not invalidate the bill in its entirety even if the bill contains some provisions with only a tenuous, rather than a rational, connection to that subject. Instead, courts should sever those provisions and leave the rest of the bill intact. This presumption in favor of severance follows both from general principles of constitutional interpretation and from specific one-subject principles.

Starting with general principles, the Court has stated in a variety of different contexts that “[w]hen this court holds that a statute is unconstitutional, severing the provision that causes it to be unconstitutional may be appropriate.” *Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86 ¶18 (home rule); *see, e.g., State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424 ¶¶ 63-66 (separation of powers); *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856 ¶¶ 94-96 (jury-trial

right); *State ex rel. Maurer v. Sheward*, 71 Ohio St. 3d 513, 523-24 (1994) (clemency power). To determine whether the Court may sever the offending provisions, the Court has long asked three questions: ““(1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?”” *Geiger v. Geiger*, 117 Ohio St. 451, 466 (1927) (citation omitted); *see also* R.C. 1.50 (articulating statutory presumption of severability).

In the specific one-subject context, the Court has repeatedly followed the same rule. Even when it agrees “that [a bill] contain[s] provisions so unrelated to its primary subject as to violate the one-subject rule,” the Court has stated, it will “sever the unrelated provisions and retain the core provisions.” *Groch*, 2008-Ohio-546 ¶ 210. This one-subject presumption in favor of severance dates to *Hinkle*—“the first case in which this court invalidated a statute on the basis of the one-subject rule.” *Nowak*, 2004-Ohio-6777 ¶ 50. There, the Court excised the local-option provision from the rest of the judicial bill. *See Hinkle*, 69 Ohio St. 3d at 149.

Since *Hinkle*, the Court has repeatedly relied on the same presumption in the one-subject context. In *OCSEA*, the Court severed the challenged collective-bargaining provision from the rest of the budget bill. 2004-Ohio-6363 ¶ 36. Likewise, because the bill in *AFL-CIO* had the primary subject of “workers’ compensation laws,” the Court struck only the challenged intentional-tort and child-labor provisions that it found unrelated. 69 Ohio St. 3d at 230. And the challenged school-voucher program in *Simmons-Harris* could be severed from the rest of the bill. *See* 86 Ohio St. 3d at 17.

The Court, moreover, has applied this severance remedy even when it could not discern a central primary subject. In *Nowak*, the Court examined a “legislative fine tuning” bill with a jumble of topics unconnected by any rational thread, including the challenged provision dealing with recorded mortgages. 2004-Ohio-6777 ¶ 60. Despite the Court’s inability to identify the bill’s primary subject, it did not strike the bill in its entirety. It instead severed the challenged provision and “save[d] the nonoffending provisions in the Act.” *Id.* ¶ 75.

It is thus safe to say that only in rare circumstances may a court strike a bill in its entirety for violating the one-subject rule. Indeed, the Court has done so only *once*—based on unique circumstances. See *Sheward*, 86 Ohio St. 3d at 499-501. *Sheward*, examined a bill legislating on the topic of “tort and other civil actions.” *Id.* at 513. The Court found that it could not sever any offending provisions from the rest of the bill for two reasons. One, the Court had trouble identifying the bill’s *primary* purpose given its broad reach: “any attempt on our part to carve out a primary subject by identifying and assembling what we believe to be key or core provisions of the bill would constitute a legislative exercise wholly beyond the province of this court. *Id.* at 500. Two, the most likely primary subject—the tort-reform topics concerning “damage caps, statutes of repose, and collateral source offsets”—was *alternatively* unconstitutional on separation-of-powers grounds. So “any possible identifiable core would not be worthy of salvation” in any event. *Id.* at 501. Thus, *Sheward* merely holds that severance to keep a bill’s “core” subject will not be proper when that core subject is *otherwise* unconstitutional under a *different* constitutional provision. That will happen only rarely.

Groch confirms *Sheward*’s narrow domain. The law in *Groch*, like the law in *Sheward*, enacted a “considerable number of provisions.” 2008-Ohio-546 ¶ 210. But the Court accepted the general subject of “this state’s tort law” as valid. *Id.* And it noted that the challenged statute

of repose was “part of that core subject.” *Id.* In other words, the law’s core subject passed muster on all other *constitutional* grounds and so was salvageable even if other provisions were “so unrelated to [the bill’s] primary subject as to violate the one-subject rule.” *Id.*

B. The 2012-2013 biennial budget bill—like all biennial budget bills—has a central subject of the state budget and operations.

Given the presumption of severance, this Court should reject Plaintiffs’ request to strike down *not simply* the prison-privatization provisions *but also* the entire bill. Am. Compl. ¶¶ 168(A), 172(A). As far as the State Defendants are aware, no Ohio court has *ever* invalidated a “budget” or “appropriation” bill *in its entirety* for violating the one-subject rule. Budget bills—especially biennial budget bills like Am. Sub. H.B. 153—have a clear subject and central purpose: to balance the budget by ensuring that the State has sufficient revenues over the two-year fiscal period to pay for the state operations discussed elsewhere in the bill.

This Court has never questioned that truism. To the contrary, it has consistently upheld budget bills. Most recently, in *OCSEA*, it said “there can be no doubt” that an appropriation bill can survive one-subject scrutiny even if it contains unrelated provisions. 2004-Ohio-6363 ¶ 34. Similarly, in *Simmons-Harris*, the Court merely struck down the school-voucher program in the budget bill; it did not invalidate the whole act. 86 Ohio St. 3d at 16-17.

The result should be no different here. Am. Sub. H.B. 153 has a primary budgetary subject. The bill contains thousands of appropriation items to dozens of state agencies. *See* Am. Sub. H.B. 153 §§ 203.10-620.40. It also ensures that revenues are sufficient to fund these appropriations—in part through provisions like those allowing the privatization and sale of prisons. Whether or not Plaintiffs correctly identify some non-budget-related needle in the appropriation-bill haystack (and the prison-privatization provisions are not such needles), it would not undercut the subject of the bill—balancing the state budget. *See* Am. Compl. ¶ 133.

It is also notable that rejection of Plaintiffs' facial attack comports with legislative intent. *See Geiger*, 117 Ohio St. at 466. Section 806.10 of the bill made that intent quite clear: "The items of law contained in this act, and their applications, are severable." Am. Sub. H.B. 153 § 806.10. Thus, the General Assembly instructed courts that "[i]f any item of law contained in this act, or if any application of any item of law contained in this act, is held invalid, the invalidity does not affect other items of law contained in this act and their applications that can be given effect without the invalid item of law or application." *Id.* To invalidate the bill in its entirety, therefore, would conflict with the General Assembly's unambiguous intent.

Finally, to allow this facial attack merely because the budget bill contains many substantive changes to the Revised Code would fundamentally alter how the General Assembly balances the state budget every two years. Across administrations, the political branches have balanced the budget through expansive bills with numerous substantive changes. The best example might be Am. Sub. H.B. 153's predecessor—Am. Sub. H.B. 1—a bill signed by former Governor Ted Strickland. That bill also surpassed 3,000 pages and contained an exhaustive list of substantive amendments. Am. Sub. H.B. 1, at 1-11 (listing changes). This practice has a lengthy pedigree. For example, Am. Sub. H.B. 117, the law that contained the voucher program struck down in *Simmons-Harris*, contained over 1,000 pages and numerous substantive changes. *See* 1995 Ohio Laws 900, 900-1970 (Am. Sub. H.B. 117). Similarly, Am. Sub. H.B. 291, the law that contained the tax upheld in *ComTech*, contained many substantive provisions on top of its pages of appropriations. *See* 1983 Ohio Laws 2872, 2872-3382 (Am. Sub. H.B. 291).

C. The Tenth District erred by remanding for the trial court to both determine the validity of the entire bill and undertake an onerous provision-by-provision review.

The Tenth District's contrary analysis was mistaken. It held both that Plaintiffs' facial attack on the budget bill "state[d] a claim upon which relief can be granted" and that the trial

court should on remand hold an “evidentiary hearing” to determine whether any provision in that bill qualifies as a “manifestly gross or fraudulent violation of the one-subject rule.” App. Op. ¶ 24. Neither of these holdings withstands scrutiny.

Facial Invalidation. The Tenth District provided no basis by which to conclude that the bill lacked any core subject so as to be *entirely* invalid. That is unsurprising given the obvious subject of revenues and expenditures at the core of this (and every other) budget bill. Instead, the Tenth District’s holding turned on this case’s *procedural posture*—that the appeal arose from the decision to grant a motion to dismiss. App. Op. ¶ 23. The court found that the facial challenge “complied with the notice-pleading requirements in Civ.R. 8(A)” and that Plaintiffs “alleged a set of facts that if proved would entitle them to” their facial relief. *Id.* ¶¶ 23-24.

But Plaintiffs cannot invoke the procedural rules at the motion-to-dismiss stage to save their facial challenge. Those rules require courts to assume the truth of only *factual* allegations, not *legal* conclusions. It is well-established that “[u]nsupported conclusions of a complaint are not considered admitted, . . . and are not sufficient to withstand a motion to dismiss.” *State ex rel. Hickman v. Capots*, 45 Ohio St. 3d 324, 324 (1989); *see also, e.g., State ex rel. Seikbert v. Wilkinson*, 69 Ohio St. 3d 489, 490 (1994); *Mitchell v. Lawson Milk Co.*, 40 Ohio St. 3d 190, 193 (1988); *Schulman v. City of Cleveland*, 30 Ohio St. 2d 196, 198 (1972).

Under this rule, Plaintiffs’ allegation that the biennial budget bill is facially invalid for the lack of one subject qualifies as a classic legal conclusion. Whether the bill contains one or more subject does not depend on any *factual* allegations. It depends on a solely legal question: whether the bill has a primary subject. Nowhere does the complaint identify any “facts” that Plaintiffs intend to prove to support their request for broad relief. Instead, the complaint simply cites other provisions of the budget bill. Am. Compl. ¶ 133. This case’s procedural posture,

therefore, provided no basis to delay a judgment for the State with respect to Plaintiffs' claim that the biennial budget bill lacks a primary subject. Because it has one, the trial court correctly entered judgment for Defendants on the facial claim.

Provision-by-Provision Analysis. Apart from facial invalidation, the Tenth District also erred by remanding for the trial court to undertake a line-by-line consideration of the over 3,000-page bill and sever any provision that it did not find adequately connected to the primary budgetary subject. App. Op. ¶ 24. Numerous factors illustrate that error.

Most obviously, Plaintiffs' complaint did not even ask for the Tenth District's remedy. Instead, it asked for one of the two remedies discussed above—either severing the *particular* prison-privatization provisions allegedly causing them injury or striking down the *entire* bill, not severing *irrelevant* provisions that they identified only in support of their broad facial claim. Am. Compl. ¶¶ 132-36, 168. Accordingly, the Tenth District erred by putting every provision in the bill on the chopping block, including thousands not even referenced by Plaintiffs.

Plaintiffs' decision not to request this type of relief makes good sense. The Tenth District's approach conflicts with this Court's *Groch* decision. There, the petitioners challenged a statute of repose in a tort-reform bill. In support of their request for facial invalidation of the bill, they identified *other* items in the bill that, they claimed, were unrelated to that core tort-reform subject. 2008-Ohio-546 ¶ 210. But the fact that the bill had a primary subject prevented *facial* relief. *Id.* And since the statute of repose that the petitioners challenged was “part of that core subject,” the Court rejected the petitioners' *specific* challenge, saving for another day any challenges to *other* provisions in the bill. *Id.* The same process applies here. The biennial budget bill has a primary subject, dooming Plaintiffs' requested *facial* relief. The prison-privatization provisions are related to that subject, dooming Plaintiffs' requested *specific* relief.

The Court can save for another day, any specific challenge to *other* portions of the biennial budget bill that Plaintiffs cite to support their facial claim. *See* Am. Compl. ¶ 133.

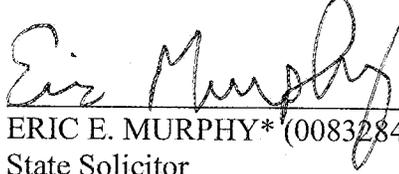
Groch's analysis has a firm foundation in the Court's traditional justiciability standards. The Tenth District's requested review is unprecedented. It asks the trial court to issue an "advisory opinion" concerning the constitutionality of unrelated provisions that have nothing to do with Plaintiffs' prison-related lawsuit—something this Court has "consistently held" should not be done. *See State ex rel. Barletta v. Fersch*, 99 Ohio St. 3d 295, 2003-Ohio-3629 ¶ 22; *see also State ex rel. White v. Kilbane Koch*, 96 Ohio St. 3d 395, 2002-Ohio-4848 ¶ 18 (identifying the "well-settled precedent that we will not indulge in advisory opinions"). Because none of these other provisions "apply to" Plaintiffs, the Court is "bound not to consider [any] challenge to [them]," as "[e]very court must 'refrain from giving opinions on abstract propositions and . . . avoid the imposition by judgment of premature declarations or advice upon potential controversies.'" *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948 ¶ 84 (citation omitted). Indeed, the Tenth District's approach conflicts with traditional standing rules—which require that the requested judicial relief *redress* the alleged injury for which a plaintiff brings suit. *See ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St. 3d 520, 2014-Ohio-2382 ¶ 7. Unlike invalidation of the bill in its *entirety* or specific invalidation of the *prison-privatization* provisions, an injunction against unrelated provisions would do nothing to remedy the prison-related injury that allegedly creates Plaintiffs' standing.

CONCLUSION

For the foregoing reasons, the Court should reverse the intermediate appellate court's decision below and reinstate the court of common pleas' judgment dismissing this suit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of State Defendants-Appellants was served by U.S. mail this 8th day of September, 2014, upon the following counsel:

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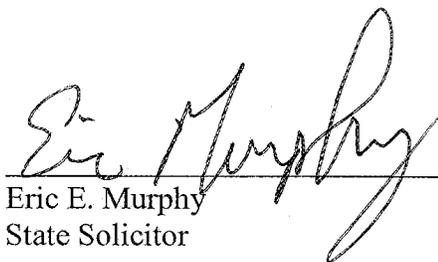
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APPENDIX

In the
Supreme Court of Ohio

14-0319

State ex rel. OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

STATE OF OHIO, et al.,

Defendants-Appellants.

Case No. _____

On Appeal from the
Franklin County
Court of Appeals,
Tenth Appellate District

Court of Appeals
Case No. 12AP001064

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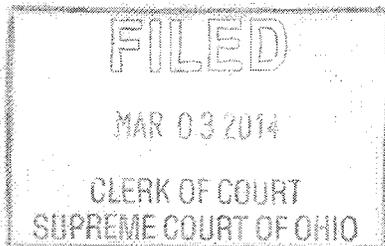
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**NOTICE OF APPEAL OF
STATE DEFENDANTS-APPELLANTS**

The State Defendants-Appellants—the State of Ohio, Governor John R. Kasich, Attorney General Michael DeWine, Secretary of State Jon Husted, Auditor of State David Yost, Ohio Department of Rehabilitation and Correction and Director Gary C. Mohr, Ohio Department of Administrative Services and Director Robert Blair, Treasurer Josh Mandel, and the Office of Budget and Management and Director Timothy S. Keen—hereby give notice of their discretionary appeal to this Court, pursuant to Ohio Supreme Court Rule 7.01, from a decision of the Tenth District Court of Appeals captioned *State ex rel. Ohio Civ. Serv. Emps. Ass'n v. Ohio*, No. 12AP-1064 and journalized on October 28, 2013. A timely application for reconsideration was filed on November 5, 2013. The Tenth District denied the application for reconsideration and journalized that decision denying reconsideration on January 22, 2014.

Date-stamped copies of the Tenth District's Judgment Entry and Memorandum Decision denying reconsideration, the Tenth District's Judgment Entry and Opinion, and the Court of Common Pleas' decision are attached as Exhibits 1-5, respectively, to the State Defendants-Appellants' Memorandum in Support of Jurisdiction.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case involves both a substantial constitutional question and a question of public and great general interest.

Respectfully submitted,

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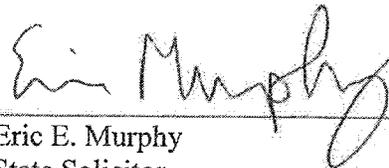
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Eric E. Murphy
State Solicitor

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Ohio Civil Service :
Employees Association et al., :

Plaintiffs-Relators :
-Appellants, :

No. 12AP-1064
(C.P.C. No. 12CV-8716)

v. :

(REGULAR CALENDAR)

State of Ohio c/o Mike DeWine et al., :

Defendants-Respondents :
-Appellees. :

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on January 16, 2014, it is the order of this court that the application for reconsideration is denied.

McCORMAC, J., SADLER, P.J., and CONNOR, J.

By: John W. McCormac
Judge John W. McCormac, retired, of the
Tenth Appellate District, assigned to active
duty under authority of the Ohio Constitution,
Article IV, Section 6(C).

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 22 11:37 AM-12AP001064

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Ohio Civil Service Employees Association et al.,	:	
	:	
Plaintiffs-Relators	:	
-Appellants,	:	No. 12AP-1064
	:	(C.P.C. No. 12CV-8716)
v.	:	
	:	(REGULAR CALENDAR)
State of Ohio c/o Mike DeWine et al.,	:	
	:	
Defendants-Respondents	:	
-Appellees.	:	
	:	

MEMORANDUM DECISION

Rendered on January 16, 2014

James E. Melle, for appellants.

Michael DeWine, Attorney General, *Richard N. Coglianesi* and *Erin Butcher-Lyden*, for appellees Governor John R. Kasich, the State of Ohio, Attorney General Mike DeWine, Secretary of State Jon Husted, Auditor David Yost, The Ohio Department of Rehabilitation and Correction and Director Gary Mohr, Treasurer of State Josh Mandel, Office of Budget and Management and Director Timothy S. Keen; *Michael DeWine*, Attorney General, and *William J. Cole*, for appellees Ohio Department of Administrative Services and Director Robert Blair.

Taft Stettinius & Hollister LLP, *Charles R. Saxbe*, *James D. Abrams* and *Celia M. Kilgard*, for appellees Corrections Corporation of America and CCA Western Properties, Inc.

Buckley King LPA, *Robert J. Walter*, *Thomas I. Blackburn* and *Diem N. Kaelber*, for Amicus Curiae Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO, Fraternal Order of Police of Ohio, Incorporated, and American Federation of State, County, Municipal Employees Ohio Counsel 8.

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 16 12:04 PM-12AP001064

No. 12AP-1064

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*Adam W. Martin, Sutter O'Connell, and Kevin W. Kita, for
appellee Management & Training Corporation.*

ON APPLICATION FOR RECONSIDERATION

MCCORMAC, J.

{¶ 1} Plaintiffs-appellants, Ohio Civil Service Employees Association et al., filed an application for reconsideration, pursuant to App.R. 26(A), of our October 10, 2013 decision in *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 10th Dist. No. 12AP-1064, 2013-Ohio-4505. In that decision, we affirmed in part and reversed in part the judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of defendants-appellees, State of Ohio c/o Mike DeWine et al.

{¶ 2} The test generally applied to an application for reconsideration is whether the application calls to the court's attention "an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." *Matthews v. Matthews*, 5 Ohio App.3d 140 (10th Dist.1981), paragraph two of the syllabus. "An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court." *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

{¶ 3} In their application for reconsideration, plaintiffs argue this court did not fully consider whether plaintiffs' complaint stated a claim upon which relief could be granted that the challenged provisions of 2011 Am.Sub.H.B. No. 153 violate Ohio Constitution, Article VIII, Section 4. Plaintiffs additionally assert this court failed to consider whether the alternative claim in plaintiffs' complaint stated a claim upon which relief could be granted that the employees of the North Central Correctional Complex are public employees as defined in R.C. 4117.01(C).

{¶ 4} Contrary to plaintiffs' contentions, we do not find we inappropriately analyzed or failed to properly consider plaintiffs' claims. The October 10, 2013 decision reflects a discussion of both the Ohio Constitution, Article VIII, Section 4 claim, and the alternative claim. *Ohio Civ. Serv. Emps. Assn.* at ¶ 33-39, 41, 49. Although plaintiffs apparently disagree with the analysis used and conclusions reached by this court, such

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 16 12:04 PM-12AP001064

No. 12AP-1064

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disagreement is an insufficient basis for granting an application for reconsideration. *Owens* at 336.

{¶ 5} Plaintiffs' application for reconsideration fails to demonstrate an obvious error in our prior decision or to raise an issue that we failed to consider or to fully consider in reaching our prior decision. Accordingly, we deny plaintiffs' application for reconsideration.

Application for reconsideration denied.

SADLER, P.J., and CONNOR, J., concur.

McCORMAC, J., retired, of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 16 12:04 PM-12AP001064

THE STATE OF OHIO Franklin County, ss	I, MARVELLEN O'SHAUGHNESSY, Clerk OF THE COURT OF APPEALS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL	
NOW ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID COUNTY THIS <u>14th</u> DAY OF <u>Jan</u> A.D. 20 <u>14</u>	
MARVELLEN O'SHAUGHNESSY, Clerk	
By <u>D. Nguyen</u> Deputy	

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Ohio Civil Service :
Employees Association et al., :

Plaintiffs-Relators :
-Appellants, :

v. :

State of Ohio c/o Mike DeWine et al., :

Defendants-Respondents :
-Appellees. :

No. 12AP-1064
(C.P.C. No. 12CV-8716)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on October 10, 2013, plaintiffs' first assignment of error is sustained in part and overruled in part and the second assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed in part and reversed in part and this cause is remanded to that court in accordance with law and consistent with this decision. Plaintiffs' motion to strike is rendered moot. Costs assessed equally.

McCORMAC, SADLER & CONNOR, JJ.

By John W. McCormac
Judge John W. McCormac

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Ohio Civil Service :
Employees Association et al., :
 :
Plaintiffs-Relators :
-Appellants, : No. 12AP-1064
 : (C.P.C. No. 12CV-8716)
v. :
 : (REGULAR CALENDAR)
State of Ohio c/o Mike DeWine et al., :
 :
Defendants-Respondents :
-Appellees. :
 :

D E C I S I O N

Rendered on October 10, 2013

James E. Melle, for appellants.

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Taft Stettinius & Hollister LLP, *Charles R. Saxbe*, *James D. Abrams* and *Celia M. Kilgard*, for appellees *Corrections Corporation of America* and *CCA Western Properties, Inc.*

Buckley King LPA, *Robert J. Walter*, *Thomas I. Blackburn* and *Diem N. Kaelber*, for Amicus Curiae *Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4*, *AFL-CIO*, *Fraternal Order of Police of Ohio, Incorporated*, and *American Federation of State, County, Municipal Employees Ohio Counsel 8*.

APPEAL from the Franklin County Court of Common Pleas

MCCORMAC, J.

{¶ 1} Plaintiffs-appellants, Ohio Civil Service Employees Association et al., appeal from a judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of defendants-appellees, State of Ohio c/o Mike DeWine et al. Because the trial court erred in granting the motion to dismiss, we reverse.

I. Procedural History

{¶ 2} Plaintiffs filed a complaint on July 9, 2012, alleging 2011 Am.Sub.H.B. No. 153 ("H.B. No. 153") as it related to section 753.10, section 812.20, and R.C. 9.06 violated three provisions of the Ohio Constitution: (1) the one-subject rule contained in Article II, Section 15(D); (2) the joint venture rule in Article VIII, Section 4 both on its face and as applied; and (3) the right to referendum in Article II, Section 1(C) because it stated R.C. 9.06 and section 753.10 as enacted were effective immediately and not subject to referendum. Plaintiffs additionally alleged H.B. No. 153 in its entirety was unconstitutional because it violated the one-subject rule. Finally, the individual plaintiffs sought declarations that they were "public employees" as defined in R.C. 4117.01(C).

{¶ 3} Plaintiffs filed an amended complaint on September 6, 2012, adding additional defendants and arguing that 2012 Am.Sub.S.B. No. 312 also unconstitutionally violated the one-subject rule. Plaintiffs sought relief in the form of a declaratory judgment, a preliminary and permanent injunction, and a writ of mandamus.

{¶ 4} Defendants filed a motion to dismiss, on September 7, 2012, arguing: (1) the trial court lacked jurisdiction under Civ.R. 12(B)(1); (2) plaintiffs lacked standing to bring the complaint; and (3) the complaint failed to state a claim upon which relief could be granted under Civ.R. 12(B)(6). After the parties fully briefed the issues, the trial court, on November 20, 2012, granted defendants' motion to dismiss, finding: (1) the court had jurisdiction over constitutional challenges to H.B. No. 153 but lacked jurisdiction over individual employee rights, including whether named individual plaintiffs were public employees under R.C. 4117.01(C); (2) plaintiffs had standing to pursue their constitutional claims; and (3) plaintiffs failed to state a claim that H.B. No. 153 violated the Ohio Constitution.

II. Assignments of Error

{¶ 5} Plaintiffs appeal, assigning two errors:

1. The trial court erred in dismissing Plaintiffs' First Amended Complaint because it stated a claim that:

A. R.C. 9.06 As Amended And R.C. 753.10 [sic] As Enacted In Am. Sub. H. B. No. 153 By The 129th General Assembly Violated Section 15(D), Article II Of The Ohio Constitution And Could Be Severed.

B. H. B. No. 153 Violated Section 15(D), Article II Of The Ohio Constitution Because Of The Many Unrelated Non-Economic Provisions And If Not Found Unconstitutional They Must Be Severed.

C. Section 4, Article VIII Of The Ohio Constitution Was Violated.

D. Section 812.20 Enacted in H. B. 153 Unlawfully Declared R.C. 9.06 And R.C. 753.10 [sic] Exempt From Referendum And Made Them Immediately Effective Thereby Precluding Any Referendum Effort In Violation Of Section 1c, Article II Of The Ohio Constitution.

E. Despite Inaction By The Plaintiffs A Violation Of The Right Of Referendum Could Be Remedied By Severance Of The Offending Provisions.

2. The trial court erred in dismissing Plaintiffs' First Amended Complaint because:

A. Record Evidence Is Required To Decide Whether Challenged Legislation And The Actions Taken Thereunder Are Unconstitutional As Applied And The Court May Not Consider Such Evidence On A Motion To Dismiss.

B. The Court Failed To Rule Whether Section 4, Article VIII Of The Ohio Constitution Was Unconstitutional As Applied And Whether Plaintiffs Alternative Claim That They Were Public Employees As Defined In R.C. 4117.01(C) Stated A Claim Upon Which Relief Could Be Granted.

For ease of discussion, we consolidate and consider plaintiffs' assignments of error out of order.

III. Constitutional Challenges

{¶ 6} Appellate review of the dismissal of a complaint under Civ.R. 12(B)(6) is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5.

{¶ 7} "A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint." *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 11. To dismiss a complaint under Civ.R. 12(B)(6) for failing to state a claim upon which relief can be granted, it must be beyond doubt from the complaint that the plaintiffs can prove no set of facts entitling them to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus, following *Conley v. Gibson*, 355 U.S. 41 (1957). The allegations of the complaint must be construed as true; the allegations and any reasonable inferences drawn from them must be construed in the nonmoving party's favor. *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, ¶ 12, citing *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, ¶ 14.

A. One-Subject Rule

{¶ 8} Ohio Constitution, Article II, Section 15(D) provides: "No bill shall contain more than one subject, which shall be clearly expressed in its title." The one-subject rule exists to prevent the legislature from engaging in logrolling, which "occurs when legislators combine disharmonious proposals in a single bill to consolidate votes and pass provisions that may not have been acceptable to a majority on their own merits." *Riverside v. State*, 190 Ohio App.3d 765, 2010-Ohio-5868, ¶ 36 (10th Dist.), citing *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 142-43 (1984). "The one-subject provision attacks logrolling by disallowing unnatural combinations of provisions in acts, *i.e.*, those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one—logrolling." *Dix* at 143.

{¶ 9} The one-subject rule also operates to prevent the attachment of riders to bills that are " 'so certain of adoption that the rider will secure adoption not on its own merits, but on the measure to which it is attached.' " *Dix* at 143, quoting Ruud, *No Law Shall Embrace More Than One Subject*, 42 Minn.L.Rev. 389, 391 (1958). "The danger of riders is particularly evident when a bill as important and likely of passage as an appropriations bill is at issue." *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16 (1999), citing Ruud at 413.

{¶ 10} "The one-subject rule is mandatory." *Riverside* at ¶ 37. *See In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, ¶ 54 ("Since the one-subject provision is capable of invalidating an enactment, it cannot be considered merely directory in nature.").

However, enforcement of the one-subject provision remains limited by affording the General Assembly "great latitude in enacting comprehensive legislation" and beginning with the presumption that statutes are constitutional. *Dix* at 145. See *Hoover v. Franklin Cty. Bd. of Commrs.*, 19 Ohio St.3d 1, 6 (1985); *State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶ 27.

{¶ 11} The constitutionality of an enactment depends "primarily, if not exclusively, on a case-by-case, semantic and contextual analysis." *Dix* at 145. Disunity of subject matter, not the mere aggregation of topics, causes a bill to violate the one-subject rule. *Nowak* at ¶ 59. Where the topics of a bill share a common purpose or relationship, the fact that the bill includes more than one topic is not fatal. *Ohio Civ. Serv. Emps. Assn.* at ¶ 28, citing *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 496 (1999), and *Hoover* at 6. "A manifestly gross and fraudulent violation" of the one-subject rule will cause an enactment to be invalidated. *Nowak* at paragraph one of the syllabus, modifying *Dix* at syllabus.

{¶ 12} H.B. No. 153 provides that its purpose is "to make operating appropriations for the biennium beginning July 1, 2011, and ending June 30, 2013; and to provide authorization and conditions for the operation of programs, including reforms for the efficient and effective operation of state and local government." (Text of Bill, at 11-12.) H.B. No. 153 is over three thousand pages long, containing amendments to over one thousand sections, enacting over two hundred sections, and repealing over one hundred sections. H.B. No. 153 encompasses a variety of topics, some of which potentially having little or no connection with appropriations.

{¶ 13} Whereas plaintiffs challenge the constitutionality of the entire bill, they specifically allege R.C. 9.06 as amended by H.B. No. 153 and section 753.10 as enacted by H.B. No. 153 violate the one-subject rule. The amendments to R.C. 9.06 in H.B. No. 153 contain various provisions effective upon the execution of a contract for the operation and management of a prison, including, but not limited to: subjecting the prison to real property tax, subjecting the gross receipts and income of the prison operator to gross receipt and income taxes of the state and its subdivisions, providing conditions before the contractor may resell or transfer the prison or terminate the contract, and providing that any action asserting R.C. 9.06 or section 753.10 of H.B. No. 153 violates the Ohio

Constitution must be brought in the Franklin County Court of Common Pleas. Section 753.10 similarly contains provisions effective upon the execution of a prison contract including: requiring the contractor to provide preferential hiring to employees of the Ohio Department of Rehabilitation and Correction, granting an irrevocable right to the state to re-purchase the prison upon specified triggering events, requiring the real estate to be sold as an entire tract and not in parcels, and requiring the proceeds of the sale of a prison be deposited in the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund.

{¶ 14} Plaintiffs contend an appropriations bill containing statutory changes unrelated to appropriations violates the one-subject rule. Defendants respond that the single subject of appropriations unifies the topics in H.B. No. 153 and argue that although the Supreme Court of Ohio has provided a limited definition of appropriations for the purposes of the right of referendum, it does not violate the one-subject rule for an appropriations bill to include statutory changes not directly appropriating money. The trial court found the prison privatization provisions were not themselves appropriations, but concluded there was no disunity of subject since prison privatization was a "connected subject to an appropriations bill." (Decision, at 19.)

{¶ 15} An appropriation is "an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes." R.C. 131.01(F). "[T]he ordinary and common meaning of the phrase 'appropriation bill' is a 'measure before a legislative body which authorizes "the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure." ' " *State ex rel. LetOhioVote.Org v. Brunner*, 123 Ohio St.3d 322, 2009-Ohio-4900, ¶ 28, quoting *State ex rel. Akron Edn. Assn. v. Essex*, 47 Ohio St.2d 47, 49 (1976), quoting Webster's New International Dictionary (2d Ed.). Appropriations bills are "different from other Acts of the General Assembly" because they "of necessity, encompass many items, all bound by the thread of appropriations." *Simmons-Harris* at 16. The challenged prison privatization provisions of H.B. No. 153 "are not themselves appropriations for state expenses because they do not set aside a sum of money for a public purpose" and neither R.C. 9.06 nor section 753.10 as amended by H.B. No. 153 "makes expenditures or incurs obligations." *LetOhioVote.Org* at ¶ 29.

{¶ 16} In *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225 (1994), the court addressed whether a bill violated the one-subject rule by making structural changes to the Industrial Commission of Ohio and Ohio Bureau of Workers' Compensation, appropriating funds for those administrative bodies, altering workers' compensation claims procedures, creating an employment intentional tort, and creating a child labor exception for the entertainment industry. *Id.* at 225-26. The court rejected the claim that the appropriation provision of the bill violated the one-subject rule, finding the inclusion of the appropriation was " 'simply the means by which the act is carried out, and the inclusion of such an appropriation does not destroy the singleness of the subject.' " *Id.* at 229, quoting *Dix* at 146. Nevertheless, the court severed the intentional tort and child labor provisions from the bill, finding a violation of the one-subject rule because the provisions "cannot be related to the common purpose of the bill." *Id.* at 230.

{¶ 17} In *Simmons-Harris*, the court examined provisions establishing the Pilot Project Scholarship Program, commonly known as the "School Voucher Program," included within a biennial appropriations bill. *Id.* at 1, 4. Because the school voucher program was a "significant, substantive program" comprising "only ten pages" of an appropriations bill totaling "over one thousand pages," the court found the program was "in essence little more than a rider attached to an appropriations bill." *Id.* at 16. Although the bill appropriated funds for the school voucher program, the court found the "creation of a substantive program in a general appropriations bill violates the one-subject rule." *Id.* at 17.

{¶ 18} In *Ohio Civ. Serv. Employees Assn.*, the court concluded the inclusion of a provision excluding certain employees from the collective bargaining process in a bill that was "loosely described as an appropriations bill" violated the one-subject rule. *Id.* at ¶ 32. The court rejected the contention that the single subject of appropriations bound the budget-related items and the exclusion of employees from the collective bargaining process, finding such a proposition "stretch[ed] the one-subject concept to the point of breaking." *Id.* at ¶ 33. Because the record did not contain an explanation for how the exclusion of Ohio School Facilities Commission employees from the collective bargaining process would "clarify or alter the appropriation of state funds," the court determined the challenged provision lacked a "common purpose or relationship" with the budget-related items in the appropriations bill. *Id.* at ¶ 34.

{¶ 19} Here, although the trial court noted "some parallels" between *Simmons-Harris* and the instant matter, it declined to find *Simmons-Harris* controlling with regard to the prison privatization aspects of H.B. No. 153. (R. 182-83; Decision, at 17.) Instead, the court applied *State ex rel. Ohio Roundtable v. Taft*, 10th Dist. No. 02AP-911, 2003-Ohio-3340, concluding that H.B. No. 153 did not violate the one-subject rule. In *Ohio Roundtable*, we found the inclusion in a "budget correction" bill of a provision authorizing the governor to enter into an agreement to operate statewide joint lottery games did not violate the one-subject rule. *Id.* at ¶ 17-18. In conducting a contextual analysis of the bill's history, we discussed the bill's "long and frequently amended history," noting that "[t]he state's financial situation worsened during the pendency of the bill, and it quickly became a vehicle for various other revenue and expenditure adjustments." *Id.* at ¶ 48. Because the lottery provisions were expected to generate a stream of revenue allocated to the funding of Ohio schools, the bill was "sufficiently related to the core subject of revenues and expenditures to justify inclusion in an appropriations bill" and therefore did not violate the one-subject rule. *Id.* at 50-51, citing *ComTech Sys., Inc. v. Limbach*, 59 Ohio St.3d 96 (1991).

{¶ 20} Following *Ohio Roundtable*, the Supreme Court of Ohio expressly rejected the "notion that a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because other provisions in the bill also impact the budget." *Ohio Civ. Serv. Emps. Assn.* at ¶ 33. Here, the subject of the various provisions in section 753.10 does not concern the acquisition of a revenue stream, but, instead, the contractual requirements for prison privatization. Because the record lacks guidance regarding the way in which the challenged provisions "will clarify or alter the appropriation of state funds," there appears to be no common purpose or relationship between the budget-related items in H.B. No. 153 and the prison privatization provisions. *Ohio Civ. Serv. Emps. Assn.* at ¶ 34. Although the sale of state prisons no doubt impacts the state budget in some fashion, allowing them to lawfully be included in an appropriations bill would "render[] the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously." *Id.* at ¶ 33. See also *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 499 (1999) (explaining that "[t]here comes a point past

which a denominated subject becomes so strained in its effort to cohere diverse matter as to lose its legitimacy as such").

{¶ 21} Recognizing that appropriations bills as a matter of course tie disparate topics together, the bill's provisions must nevertheless meet the test of an appropriation. A bill may " 'establish an agency, set out the regulatory program, and make an appropriation for the agency without violating the one-subject rule,' " but a general appropriations bill cannot constitutionally establish a substantive program related to the subject of appropriations only insofar as it impacts the budget. *Ohio AFL-CIO* at 229, quoting *Rudd* at 441; see *Ohio Civ. Serv. Emps. Assn.* at ¶ 33; *Simmons-Harris* at 17;. The prison privatization provisions contained in R.C. 9.06 and section 753.10 are significant and substantive. However, given that such provisions amount to approximately twenty of over three thousand pages in H.B. No. 153, they are "in essence little more than a rider attached to an appropriations bill." *Simmons-Harris* at 16.

{¶ 22} Other factors to consider in determining whether disunity exists between provisions of a bill include whether the challenged provisions are "inherently controversial" or "of significant constitutional importance." *Simmons-Harris* at 16. Arguably, the provisions in H.B. No. 153 authorizing the sale of several state prisons are similarly expansive in scope to the school voucher program rendered unconstitutional in *Simmons-Harris* and more expansive than the collective bargaining amendment in *Ohio Civ. Serv. Emps. Assn.* See *Ohio Civ. Serv. Emps. Assn.* at ¶ 35. Indeed, the importance of the prison privatization provisions "to those affected by it, however few, cannot be doubted." *Id.* Finally, no rational reason for the combination of the prison privatization provisions and the budget-related appropriations exists in the record, suggesting that the combination was for tactical reasons. See *Simmons-Harris* at 16-17, citing *Dix* at 145.

{¶ 23} Beyond the two sections relating to the privatization of prisons, plaintiffs assert other provisions in H.B. No. 153 violate the one-subject rule. The trial court, while noting that "a number of provisions of H.B. 153, as cited by Plaintiffs, 'appear' to clearly be at odds with the Single Subject Rule," declined to address those provisions, stating "[w]hether the other sections of H.B. 153 that are cited by Plaintiffs are actually in violation of the Single Subject Rule does not affect the outcome regarding the prison privatization portions of this bill (which is what Plaintiffs' action is really about)." (Decision, at 19.) Plaintiffs' amended complaint, however, claimed the entire bill was

unconstitutional and, as the trial court noted, listed several examples of provisions they alleged were violative of the one-subject rule. At the very least, the amended complaint thereby complied with the notice-pleading requirements in Civ.R. 8(A). *See Smith v. Kamberling*, 10th Dist. No. 12AP-693, 2013-Ohio-1211, ¶ 8-9; *Ford v. Brooks*, 10th Dist. No. 11AP-664, 2012-Ohio-943, ¶ 13.

{¶ 24} Because plaintiffs alleged a set of facts that if proved would entitle them to relief, the trial court erred in granting defendants' motion to dismiss the complaint for failing to state a claim upon which relief can be granted. *Hoover* at 6-7. Therefore, the trial court must continue proceedings consistent with this decision, including holding an evidentiary hearing to determine whether the bill in question had only one subject pursuant to Ohio Constitution, Article II, Section 15(D). *Id.* If, after holding an evidentiary hearing, the trial court finds any provisions constitute a manifestly gross or fraudulent violation of the one-subject rule, such that the provisions bear no common purpose or relationship with the budget-related items and give rise to an inference of logrolling, the court must sever the offending provisions. *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St.3d 145, 149 (1991) (concluding severance to be the appropriate remedy where possible to cure the defect and save those sections relating to a single subject). *See also Ohio Civ. Serv. Emps. Assn.* at ¶ 36.

B. Right of Referendum

{¶ 25} Ohio Constitution, Article II, Section 1 provides in pertinent part: "The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided." The right of referendum "applies to every law passed in this state and provides an important check on actions taken by the government." *State ex rel. Ohio Gen. Assembly v. Brunner*, 115 Ohio St.3d 103, 2007-Ohio-4460, ¶ 9.

{¶ 26} Subject to specified exceptions, laws do not take effect until 90 days after having been filed with the governor and the secretary of state in order to allow for the filing of a petition for referendum. Ohio Constitution, Article II, Section 1(C). *See also Ohio Gen. Assembly* at ¶ 9. Ohio Constitution, Article II, Section 1(D) lists exceptions to the general rule that all laws and sections of laws are subject to referendum, providing in

pertinent part: "Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. * * * The laws mentioned in this section shall not be subject to referendum."

{¶ 27} "The constitutional right of citizens to referendum is of paramount importance." *Ohio Gen. Assembly* at ¶ 8. "The referendum * * * is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to 'give citizens a voice on questions of public policy.' " *Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 673 (1976), quoting *James v. Valtierra*, 402 U.S. 137, 141 (1971).

{¶ 28} Plaintiffs contend the trial court erred by dismissing their claim despite finding a violation of the right of referendum. The trial court found R.C. 9.06 and section 753.10 were not exempt from the right of referendum because they failed to meet the listed exceptions in Ohio Constitution, Article II, Section 1(D). However, the trial court concluded that plaintiffs could not avail themselves of the right of referendum because they admitted they made "no effort to seek, obtain, or file referendum petitions from or with the Secretary of State." (Decision, at 25.)

{¶ 29} As previously noted, R.C. 9.06 as amended by H.B. No. 153 and section 753.10 as enacted in H.B. No. 153 "are not themselves appropriations for state expenses because they do not set aside a sum of money for a public purpose." *LetOhioVote.Org* at ¶ 29. Further, nothing "would permit the referendum exception to apply to provisions that, once implemented, raise revenue to provide funds for an appropriation in another part of the act, even if * * * they are 'inextricably tied' or related to each other." *LetOhioVote.Org* at ¶ 35. Because the contested provisions do not fall within the exceptions to the right of referendum, pursuant to *LetOhioVote.Org*, R.C. 9.06 and section 753.10 violate the right of referendum.

{¶ 30} Defendants do not contest that R.C. 9.06 and section 753.10 violate the right of referendum, but continue to argue that plaintiffs' failure to file a referendum petition with the secretary of state within 90 days of the effective date of H.B. No. 153 is fatal to their claim. In support of this contention, defendants cite to *State ex rel. Ohioans for Fair Dists. v. Husted*, 130 Ohio St.3d 240, 2011-Ohio-5333, for the proposition that a

referendum petition must be timely filed within 90 days from the date the governor filed the bill in the office of the secretary of state.

{¶ 31} Here, because the record does not reflect that plaintiffs timely filed a petition for referendum or made any attempt to exercise such right, it was within the trial court's discretion to determine that they forfeited the right to referendum pursuant to *Ohioans for Fair Dists. Id.* at ¶ 1. Unlike *LetOhioVote.Org*, wherein the court granted an extension of time for the plaintiffs to file a referendum petition with the office of the secretary of state after the office rejected their first timely attempt to file, plaintiffs, in the present matter, admit they made no effort to file a referendum petition. In reaching this conclusion, we recognize that the filing of a referendum petition constitutes a significant investment of time and money. However, such obstacles, especially in consideration of plaintiffs' absence of action during the pendency of the present action, do not remove the requirement that a petition for referendum be timely filed before seeking relief for a violation of the right of referendum.

{¶ 32} Accordingly, the trial court did not err in dismissing plaintiffs' complaint as it related to the violation of the right of referendum in Ohio Constitution, Article II, Section 1(C).

C. Joint Venture

{¶ 33} Ohio Constitution, Article VIII, Section 4 provides, in pertinent part: "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 or association in this state, or elsewhere, formed for any purpose whatever."

{¶ 34} A joint venture is " 'an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill and knowledge, without creating a partnership, and agree that there shall be a community of interest among them as to the purpose of the undertaking, and that each coadventurer shall stand in the relation of principal, as well as agent, as to each of the other coadventurers.' " *Al Johnson Constr. Co. v. Kosydar*, 42 Ohio St.2d 29 (1975), paragraph one of the syllabus, quoting *Ford v. McCue*, 163 Ohio St. 498 (1955), paragraph one of the syllabus. The state, in compliance with Article VIII, cannot act as "the owner of part of a property which is

owned and controlled in part by a corporation or individual." *Alter v. Cincinnati*, 56 Ohio St. 47 (1897).

{¶ 35} However, Article VIII does not forbid all collaboration between the state and private enterprises. See *Grendell v. Ohio Environmental Protection Agency*, 146 Ohio App.3d 1, 10-11 (9th Dist.2001). "[T]he appropriation of public money to a private corporation to be expended for a public purpose is a valid act of the legislative body." *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 151 (1955). See also *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, ¶ 67; *Cincinnati v. Dexter*, 55 Ohio St. 93 (1896) ("A sale made in good faith, and for a fair value, under such circumstances, cannot properly be characterized as a loan of the credit of the municipality, directly or indirectly, to or in aid of the purchaser."); *State ex rel. Campbell v. Cincinnati St. Ry. Co.*, 97 Ohio St. 283, 309 (1918) (holding that a city "has the right to contract with the railway company for the operation thereof" and "has also the right to provide in the contract for the payment of all expenses of operation, depreciation, maintenance, etc., out of the gross proceeds received from all sources of operation of the road, under such terms and conditions as the city and its duly authorized officers and boards may deem to be for its best interests").

{¶ 36} Plaintiffs assert both a facial challenge and a challenge to the application of R.C. 9.06 and section 753.10. "To prevail on a facial constitutional challenge, the challenger must prove the constitutional defect, using the highest standard of proof, which is also used in criminal cases, proof beyond a reasonable doubt." *Ohio Congress of Parents & Teachers* at ¶ 21, citing *Dickman*, paragraph one of the syllabus. "To prevail on a constitutional challenge to the statute as applied, the challenger must present clear and convincing evidence of the statute's constitutional defect." *Ohio Congress of Parents & Teachers* at ¶ 21, citing *Belden v. Union Cent. Life Ins. Co.*, 143 Ohio St. 329 (1944), paragraph six of the syllabus.

{¶ 37} Plaintiffs contend the payment of an annual ownership fee, the reservation of a right to repurchase the prisons, and the various regulatory provisions governing operation of the privatized prisons cause R.C. 9.06 and section 753.10 to violate the prohibition on joint ventures and also unconstitutionally extend the state's credit to a private enterprise. Defendants respond that the sale of a public facility, authorized by the

legislature and made in good faith and for fair-market value, is constitutional and cannot be characterized as a loan.

{¶ 38} Here, nothing in plaintiffs' complaint demonstrates that the challenged provisions result in the sort of partnerships or unions that the Ohio Constitution forbids. The state retains no ownership interest in the facilities to be privatized because the challenged provisions authorize the sale of the property as an entire tract by quit-claim deed. *Compare State ex rel. Eichenberger v. Neff*, 42 Ohio App.2d 69, 75 (10th Dist.1974) (finding an arrangement wherein "the land of the state is joined by the improvements of the lessee under the lease" violated Ohio Constitution, Article VIII, Section 4). Under the challenged sections, the state and private entities do not possess " 'equal authority or right to direct and govern the movements and conduct of each other.' " *Grendell* at 11, quoting *Ford* at 502-03. Plaintiffs point to no authority for the proposition that a contractual right to repurchase the property violates Ohio Constitution, Article VIII, Section 4. Finally, payment of the annual ownership fee by the state to the prison operators does not violate Article VIII, Section 4 because the Ohio Constitution " 'does not forbid the employment of corporations, or individuals, associate or otherwise, as agents to perform public services; nor does it prescribe the mode of their compensation.' " *Grendell* at 12, quoting *Taylor v. Ross Cty. Commrs.*, 23 Ohio St. 22, 78 (1872).

{¶ 39} Even accepting all of the allegations in the complaint as true and making all reasonable inferences in favor of plaintiffs, no set of facts in plaintiffs' complaint, if proven, would entitle them to relief. *See Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 193 (1988) (finding a court need not presume the truth of conclusions unsupported by factual allegations); *Pepper v. Bd. of Edn. of Toledo Pub. Schools*, 6th Dist. No. L-06-1199, 2007-Ohio-203, ¶ 13, 18. Accordingly, the trial court did not err in dismissing plaintiffs' complaint with regard to the allegations of a violation of Ohio Constitution, Article VIII, Section 4 both on its face and as applied.

{¶ 40} In conclusion, plaintiffs' first assignment of error as it relates to a violation of the one-subject rule is sustained, but as it relates to all other alleged errors is overruled.

IV. Alternative Claim

{¶ 41} Finally, plaintiffs assert that the trial erred in dismissing their complaint because they stated a claim that the employees working at the Marion prison complex are public employees as defined in R.C. 4117.01(C). Defendants respond that the State

Employment Relations Board ("SERB") has exclusive jurisdiction to determine whether an individual is a public employee as defined in R.C. 4117.01(C) and, as a result, plaintiffs lacked standing to pursue their constitutional and alternative claims.

{¶ 42} Standing is " 'a party's right to make a legal claim or seek judicial enforcement of a duty or right.' " *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶ 27, quoting Black's Law Dictionary (8th Ed.2004) 1442. Unless the party seeking relief establishes standing, a court cannot consider the merits of the party's legal claim. *Ohio Pyro* at ¶ 27; *U.S. Bank Natl. Assn. v. Gray*, 10th Dist. No. 12AP-953, 2013-Ohio-3340, ¶ 17, citing *Fed. Home Loan Mtge. Corp. v. Schwartwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 22.

{¶ 43} To establish standing, a plaintiff must have a personal stake in the matter he or she seeks to litigate. *League of United Latin Am. Citizens v. Kasich*, 10th Dist. No. 10AP-639, 2012-Ohio-947, ¶ 21, citing *Tiemann v. Univ. of Cincinnati*, 127 Ohio App.3d 312, 325 (10th Dist.1998). A plaintiff demonstrates his or her personal stake by alleging an actual, palpable injury caused by the defendant that has a remedy in law or equity. *Id.*, citing *Tiemann* at 325. An injury borne by the population in general is not sufficient to confer standing, but must be borne by the plaintiff in particular. *Id.*, citing *Tiemann* at 325, citing *Allen v. Wright*, 468 U.S. 737 (1984). *See also State ex rel. Walgate v. Kasich*, 10th Dist. No. 12AP-548, 2013-Ohio-946, ¶ 16.

{¶ 44} "R.C. Chapter 4117 established a comprehensive framework for the resolution of public-sector labor disputes by creating a series of new rights and setting forth specific procedures and remedies for the vindication of those rights." *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 169 (1991). R.C. 4117.12(A) provides that unfair labor practices are "remediable by the state employment relations board as specified in this section," but does not provide for the filing of an original complaint in common pleas court. "Ultimately, the question of who is the 'public employer' must be determined under R.C. Chapter 4117." *Franklin Cty. Law Enforcement Assn.* at 170.

{¶ 45} The trial court found that SERB was the proper jurisdictional vehicle to pursue questions involving public employees, but determined that SERB did not possess the authority to resolve whether the statutes in question were constitutional. The trial court also found that R.C. 9.06(K) conferred jurisdiction as to constitutional questions

regarding the challenged amendments to H.B. No. 153. As a result, the trial court concluded plaintiffs had standing to bring their claims since the trial court had jurisdiction, plaintiffs alleged a tangible injury in fact, and plaintiffs could not pursue remedies to their constitutional claims in another forum.

{¶ 46} Defendants do not contest that SERB would be unable to address the constitutional claims asserted by the plaintiffs. Instead, defendants assert without reference to authority that R.C. 9.06(K) does not supply the trial court with jurisdiction, but rather is a venue provision. R.C. 9.06(K) as amended in H.B. No. 153 provides: "Any action asserting that section 9.06 of the Revised Code or section 753.10 of the act in which this amendment was adopted violates any provision of the Ohio constitution . . . shall be brought in the court of common pleas of Franklin county." We conclude the trial court possessed jurisdiction to decide the constitutional claims raised by plaintiffs. *See Nibert v. Dept. of Rehab. & Corr.*, 119 Ohio App.3d 431, 433 (10th Dist.1997); *Wandling v. Ohio Dept. of Transp.*, 78 Ohio App.3d 368, 371 (4th Dist.1992).

{¶ 47} Defendants' contention that plaintiffs lacked standing to pursue their constitutional claims is also without merit. Defendants admit that SERB lacks the authority to resolve the constitutional claims asserted in this case, and simultaneously assert that plaintiffs cannot demonstrate an injury sufficient to confer standing because SERB is the only proper forum to address questions involving public employees.

{¶ 48} Here, unlike in *Walgate*, plaintiffs allege a direct, concrete injury different from that suffered by the public in general. *Id.* at ¶ 16. Since it would have been futile for plaintiffs to assert their constitutional claims before SERB, it would be a manifest absurdity to also prevent them from asserting their constitutional claims before the trial court. "Because administrative bodies have no authority to interpret the Constitution, requiring litigants to assert constitutional arguments administratively would be a waste of time and effort for all involved." *Jones v. Chagrin Falls*, 77 Ohio St.3d 456, 460-61 (1997). We therefore conclude plaintiffs had standing to pursue their constitutional claims at the trial court.

{¶ 49} Finally, because resolution of plaintiffs' alternative claim depends on interpretation of the scope of "public employer" as defined by R.C. Chapter 4117, the trial court did not err in finding SERB has exclusive jurisdiction over such interpretation and dismissing plaintiffs' complaint as to their alternative claim. *Franklin Cty. Law*

Enforcement Assn. at 169; *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 469 (1993). Accordingly, plaintiffs' second assignment of error is overruled.

V. Motion to Strike

{¶ 50} Plaintiffs filed a motion to strike materials in defendants' merit brief and appendix they allege were not part of the record. As it is unnecessary to rely on the materials plaintiffs seek to strike in order to reach the foregoing conclusions, we overrule as moot plaintiffs' motion to strike. *MP Star Financial, Inc. v. Cleveland State Univ.*, 10th Dist. No. 03AP-1156, 2004-Ohio-3840, ¶ 12, *aff'd*, 107 Ohio St.3d 176, 2005-Ohio-6183.

VI. Disposition

{¶ 51} Because plaintiffs' complaint sufficiently states a claim that the challenged legislation violates the one-subject rule of the Ohio Constitution, we conclude the trial court erred in granting defendants' motion to dismiss. Plaintiffs' first assignment of error is sustained in part and overruled in part and plaintiffs' second assignment of error is overruled. Plaintiffs' motion to strike is rendered as moot. Accordingly, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas and remand with instructions to continue proceedings.

*Judgment affirmed in part;
reversed in part and cause remanded.*

SADLER and CONNOR, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

State, ex rel. Ohio Civil Service :
Employees Association, et al., :

Plaintiffs, : Case No. 12-CV-8716

Vs. : Judge Pat Sheeran

State of Ohio, et al., :

Defendants. :

DECISION AND ENTRY SUSTAINING MOTION TO DISMISS

Sheeran, J.

This case is before the Court on defendants' Motion to Dismiss the Complaint.

On July 9, 2012, plaintiffs filed a Complaint for Declaratory Judgment, for a Writ of Mandamus, and for injunctive relief. The gist of the Complaint is that the defendants privatized a state owned prison (Lake Erie Correctional Facility), by selling it to Corrections Corporation of America, a named defendant, and that the defendants privatized another state prison, the North Central Correctional Institution, by entering into a contract with defendant Management & Training Corporation, which would run that institution. One consequence of these acts is that the plaintiffs lost their jobs, incurring financial losses as a result of those actions. Plaintiffs contend that the State defendants are also unconstitutionally authorized to sell four other prisons.¹

This case was originally assigned to Judge Horton. A motion to transfer the case was filed by the Defendants. Judge Horton GRANTED the transfer, and in doing so held that this case was a re-filed case. Having reviewed that Decision, this Court has no disagreement with it.

¹ Complaint, at ¶55.

Plaintiffs contend that the statutory authority relied on by the State defendants in these privatization actions are unconstitutional on their face, and as applied to the employee plaintiffs. As a result of the alleged constitutional deficiencies, the actions taken by the State defendants were and are void and illegal, and that the sale of the prison facility must be “vacated and cancelled.”² The employee plaintiffs seek reinstatement and reimbursement for their losses. Plaintiff OCSEA also alleges the loss of over 270 bargaining unit members from the two prisons that have been privatized to date.

The bases for the claim of unconstitutionality are alleged violations of Article II, Section 15(D) of the Ohio Constitution (the “Single Subject” rule), Article VIII, Section 4 of the Ohio Constitution (“Prohibition Against Joining Property Rights”), and Article II, Section 1 and 1c of the Ohio Constitution (the “Right to Referendum”), as they relate to Ohio Revised Code sections 9.06, 753.10 and 812.20. The plaintiffs also ask that Am.Sub.H.B. No. 153 be declared unconstitutional in that it allegedly violates the Single Subject Rule.

In the alternative, plaintiffs ask for a declaration that the individuals now working in the affected prisons are public employees, as that term is defined in R.C. 4117.01(C).

On September 6, 2012, plaintiffs filed an Amended Complaint. The amended complaint added Josh Mandel, as the State Treasurer, the Office of Management and Budget, and its director, Timothy Keen, as parties defendant. The amended complaint also added a section on Sub.S.B. No. 321, arguing that it is unconstitutional in violation of the Single Subject Rule.³

The State Defendants filed a Motion to Dismiss on September 7, 2012. On September 13, 2012, the plaintiffs filed a Motion to file an Amended Complaint. This motion was filed in order to comply with the requirement that leave of court is required to amend a complaint once a

² Complaint, at ¶3.

³ Amended Complaint, at ¶¶137-141.

defendant has filed an answer or other responsive pleading. Plaintiffs noted that they erred in not realizing that three of the twelve defendants had filed an answer prior to the filing of the amended complaint. On November 2, 2012, this Court sustained the motion to amend the complaint. For purposes of this Motion, the plaintiffs and the defendants have agreed that the defendants' do not first have to file an Amended Answer, and that the original motion to dismiss applies to all parties, including the new ones who were added in the Amended Complaint.

Prefatorily, this Court will note that when considering a Motion to Dismiss, a court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the non-moving party. Dismissal of a claim pursuant to Civ. R. 12(B)(6) is only appropriate where it appears beyond a doubt that a plaintiff can prove no set of facts in support of his claim that would entitle him to relief.⁴

1. The Jurisdictional Argument: R.C. Chapter 4117

The first argument defendants raise is that this Court should dismiss the complaint based on a lack of jurisdiction; specifically, that R.C. Chapter 4117 grants the State Employee Relations Board (SERB) exclusive jurisdiction to determine who is a public employee.

Certainly, where a court lacks subject matter jurisdiction, it has no choice but to dismiss the complaint. However, the lack of jurisdiction must be "patent and unambiguous."⁵

Part of the relief requested in the amended complaint is for this Court to order that the individual plaintiffs herein are public employees for purposes of their wages and benefits, as

⁴ See, e.g. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St. 3d 190, 192, cited in, e.g. *Moore v. City of Middletown*, 133 Ohio St. 3d 55, 2012 Ohio 3897.

⁵ *State, ex rel. Smith, v. Frost* (1995), 74 Ohio St. 3d 107, 109; see also *State ex rel. FOP v. Court of Common Pleas* (1996), 76 Ohio St. 3d 287, 289 (writ of prohibition will be granted where court patently and unambiguously lacks jurisdiction).

defined in R.C. 4117.03. Defendants argue that the SERB has exclusive jurisdiction to determine who is a public employee.⁶

In *Franklin County Law Enforcement Ass'n. v. Fraternal Order of Police* (1991), 59 Ohio St. 3d 167, the Ohio Supreme Court affirmed the trial court's dismissal of a case where the plaintiffs sought injunctive relief that would restrain the FOP from conducting a vote, and would prevent any collective bargaining agreement until SERB designated the proper union representative. Other cases cited by the state defendants have similar holdings.

In their supplemental brief, defendants cite *Carter v. Trotwood-Madison City Bd. of Education* (2d App. Dist.), 2009 Ohio 1769, 181 Ohio App. 3d 764. Here, two retired teachers filed suit for an alleged breach of contract. The issue was whether the retired teachers were public employees. In affirming (but on other grounds) the decision of the trial court to dismiss the action, the court of appeals held that SERB has exclusive jurisdiction under R.C. Chapter 4117.

In numerous cases, courts have held that SERB has exclusive original jurisdiction over the issue of whether a particular entity is a "public employer" or whether particular parties or groups are public employees." (citations omitted).

The Ohio Supreme Court also stressed in *Franklin Cty. Law Enforcement* that "[u]ltimately, the question of who is the 'public employer' must be determined under R.C. Chapter 4117." 59 Ohio St. 3d 167, 170, 572 N.E. 2d 87. The Ohio Supreme Court, therefore, concluded that SERB had exclusive jurisdiction over the case, and that the trial court did not have jurisdiction. *Id.*

Id., at ¶¶58-59.

Plaintiffs' response to the jurisdictional issue is two-fold: First, R.C. 9.06 "squarely vested jurisdiction over the entire case in the Franklin County Common Pleas Court. 9.06(K)."⁷

This section reads in pertinent part as follows:

⁶ Defendants' motion to dismiss, at p. 6.

⁷ Plaintiffs' Supplemental Brief, at 1.

Any action asserting that section 9.06...or 753.10 of the act in which this amendment was adopted violates any provision of the Ohio constitution...shall be brought in the court of common pleas of Franklin county.

Defendants assert that this section is a venue statute, not a jurisdictional one. However, it has long been held in similarly worded sections involving appeals from state administrative agencies, are jurisdictional statutes. See, e.g. the appeals procedure from decisions of the state personnel board of review, as set forth in section 119.12 of the Revised Code. In *Hoffman v. Montgomery County Commissioners* (2d App. Dist. No. 7555), 1982 Ohio App. Lexis 12905, the Court of Appeals for Montgomery County noted that an administrative appeal brought under R.C. 119.12, which requires the case to be filed in the Franklin County Court of Common Pleas, but which in that particular case was filed in the Montgomery County Court of Common Pleas, was properly dismissed for lack of jurisdiction. The trial court there refused a request to transfer venue to Franklin County and the appeals court agreed, noting that since there was no jurisdiction, the action was not properly commenced, and therefore the Montgomery County court had no authority to change venue.

This Court does not see any significant difference between the two statutes. Had, for example, plaintiffs commenced this action in another common pleas court, *Hoffman* would require dismissal, not a change of venue.

Another case noting the jurisdictional requirement of statutorily mandated courts in which certain administrative appeals may be brought is *Nibert v. Department of Rehabilitation and Correction/London Correctional Institution* (10th App. Dist.), 119 Ohio App. 3d 431, 1997 Ohio App. Lexis 1761. Here, the Franklin County Court of Appeals affirmed the dismissal of a case because the action, governed by R.C. 124.34, should have been filed in the county in which the employee resided, and not in Franklin County. As in *Hoffman*, the appeals court noted that

this was a jurisdictional issue, not one involving venue. And the Tenth District made its ruling despite the fact that, as that Court noted, “the present case presents unusual and compelling circumstances for allowing a deviation from the established statutory and case law, [but] we may not ignore the mandate expressed in the first syllable of *Davis*.”⁸

Based on the foregoing, this Court finds that R.C. 9.06(K) is a jurisdictional statute, not one involving venue.

Having so concluded, does this finding conflict with the requirement that matters involving a determination of whether any individual plaintiffs are public employees be determined by SERB administratively? The language of the subsection states that “Any action asserting that [either section] violates...the Ohio constitution and any claim asserting that any action taken by the governor or the department of administrative services or the department of rehabilitation and correction pursuant to section 9.06...or section 753.10...violates any provision of the Ohio constitution or any provision of the Revised Code shall be brought in the [Franklin County common pleas court]. (Emphasis added).

This Court finds that there is no conflict. There is no contention that the actions of any of the defendants “violated” R.C. Chapter 4117. There may be circumstances from the sale of prisons that affect employees, but that does not mean that Chapter 4117 is violated, it merely means that Chapter 4117 is brought into play in order to determine the rights of those persons affected by the sale. However, it bears repeating that there is no allegation that Chapter 4117 itself has in any way actually been violated.

Based on the foregoing, this Court holds that it has jurisdiction on issues concerning the constitutionality of sections 9.06 and 753.10. However, that holding, as noted, does not preclude

⁸ *Nibert*, citing *Davis v. Board of Review* (1980), 64 Ohio St. 2d 102, syllabus paragraph 1. A reading of the case indeed shows the strong possibility of confusion in where to file the appropriate appeal.

SERB's jurisdiction concerning the rights of employees that relate to their employment status. In fact, section 9.06(K) does not affect SERB's jurisdiction at all. They are separate matters.

To summarize the opinion to this point: SERB has exclusive jurisdiction over employee rights, including whether or not the named individual plaintiffs are public employees. This Court has exclusive jurisdiction over the constitutional challenges to the privatization of Ohio prisons.

2. Standing

The next issue involves standing, specifically the question of whether any of the plaintiffs have standing to contest the legislative action. Since SERB has exclusive jurisdiction to determine the employee rights questions in this case, the issue becomes whether any plaintiff alleges anything in the Amended Complaint that would give that person (or organization) standing to contest the constitutionality of the statutes in question. Since the allegations of economic damages are to be determined administratively by SERB, there must be some other basis for standing in order for this case to proceed.

The Amended Complaint seeks declaratory and injunctive relief, as well as a request for a writ of mandamus. The writ of mandamus, requested in Count Three, asks for the reinstatement of the individual plaintiffs to the positions they held prior to the sale of, or private contracts entered into with, the private entities mentioned in the Amended Complaint. As concluded earlier, the reinstatement of the individual plaintiffs is a matter for SERB to determine. Therefore, there is no extraordinary writ before this Court in terms of the constitutionality of the prison sale.

In *ProgressOhio.org, Inc. v. JobsOhio* (10th App. Dist), 2012 Ohio 2655, 973 N.E. 2d 307, the Franklin County Court of Appeals upheld the dismissal of that case based on a lack of standing. In so holding, that Court spoke extensively on the issue of standing.

Under the doctrine of standing, a litigant must have a personal stake in the matter he or she wishes to litigate. [citation omitted]. Standing requires a litigant to have “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for the illumination of difficult***questions.” [Citations omitted]. In order to have standing, a plaintiff must demonstrate some injury caused by the defendant that has a remedy in law or equity. *Id.* The injury is not required to be large or economic, but it must be palpable. *Id.* Furthermore, the injury cannot be merely speculative, and it must also be an injury to the plaintiff himself or to a class. *Id.* An injury that is borne by the population in general, and which does not affect the plaintiff in particular, is not sufficient to confer standing. [citation omitted].

Id., at ¶8.

In this case, *if* SERB did not have exclusive jurisdiction of the employees’ status, with all the issues that relate to it, including the issue of economic loss, there is no doubt that the individual plaintiffs would have standing to pursue this claim. Clearly, they have a stake that is far more palpable than that of any injury allegedly borne by the population in general.

However, it is clear to this Court that SERB does have, to the exclusion of this Court, jurisdiction over those issues. Therefore, those alleged injuries, which are clearly significant claims, do not give the plaintiffs standing here.

Public right standing is one basis in which the constitutionality of a statute may be brought. It is an exception to the personal injury requirement one must otherwise allege in order to have standing. Public right “is conceived as an action to vindicate the general public interest.” *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 1999 Ohio 123.

A close reading of *ProgressOhio.org* indicates that it is not an absolute *requirement* that a plaintiff must seek an extraordinary writ. Or, to put it another way, “overwhelmingly” does not equate to “exclusively.”⁹ Having said that, however, the Tenth District made it clear that,

⁹ See *ProgressOhio.org* at ¶17. In fact, two paragraphs later, the Court of Appeals noted that the vehicle—injunctive relief or extraordinary writ—was “ultimately irrelevant.”

regardless of whether an extraordinary writ is sought or not, there must be “rare and extraordinary circumstances necessary to invoke public interest standing.”¹⁰

The examples cited in the above footnote, that is, where the challenge is to a statute that constitutes an “attack on the judiciary” or affects the right of “every worker” to participate in the Workers’ Compensation system, clearly indicate the nature and scope of the case of rare and extraordinary situations where public interest standing may be invoked. This case, no matter how one reads the Amended Complaint, fails to rise to that level.¹¹

Because the individual plaintiffs lack standing, ProgressOhio.org also lacks standing.

ProgressOhio.org, supra.

OCSEA’s standing is based on the economic injury that resulted from each of the individually named plaintiffs. Again, noting that the economic injury alleged would be sufficient to constitute a personal stake in the case, and thus make it a true adversarial proceeding, that injury is one that must be determined by SERB.

The analysis thus far has been quite straightforward, and would appear to require this Court to dismiss this case. Having said that, however, Plaintiffs raise an issue that is exceedingly troubling to this Court. Specifically, Plaintiffs note that the Collective Bargaining Agreement (CBA) between the parties cannot be utilized to provide an arbitrator authority to determine the rights of the parties. The Defendants argue that the CBA does provide the wherewithal to give Plaintiffs their just due.

¹⁰ Id., at ¶19. As examples, the Court cited *Sheward* (“an attack on the judiciary...[which] affected every tort claim in Ohio”) and *State ex rel. Ohio AFL-CIO v. Bur. Of Workers’ Comp.*, 97 Ohio St. 3d 504, 2002 Ohio 6717 (“statute at issue...affected every injured worker in Ohio seeking to participate in the worker’s compensation system.”). Statutes that affect a limited number of employees are not in that category.

¹¹ Id., at ¶31: “There is no question that appellants’ challenge raises significant concerns about at least some of the provision of the JobsOhio Act. However, in terms of great public interest, the most one can say about the challenged legislation is that it ‘makes significant changes to the organizational structure of state government.’ (citation omitted). *This is not enough of a public concern to confer standing on appellants.*” (Emphasis added).

Article 25 of the CBA governs the grievance procedure. The word “grievance” itself is given an expansive definition, “any difference, complaint or dispute between the Employer and the Union or any employee regarding the application, meaning or interpretation of this Agreement.”¹² The procedure that follows “shall be the exclusive method of resolving grievances.”¹³

Plaintiffs note that the current CBA was in effect *before* the adoption of Am. Sub. H.B. No. 153 was adopted and argues that the CBA “could not...contain [the type of] specific language which identifies and preempts R.C. 9.06 or R.C. 753.10...”¹⁴

In *State ex rel. Ohio Association of Public School Employees v. Batavia Local School District Board of Education*, 2000 Ohio 130, 89 Ohio St. 3d 191, the collective bargaining agreement (cba) ran from March 1, 1996 through February 28, 1999. At the end of the 1998 academic year, i.e. June, 1998, the board of education (“board”) considered, then did, enter into a contract with a private company to provide bus transportation. The result of this act included the laying off of the fourteen persons who had held those positions. This led to a grievance being filed by some of the affected employees. The superintendent refused to reinstate those employees, and said employees filed for extraordinary relief in the Court of Appeals. That court granted summary judgment to the board. The Supreme Court, in a 4-3 decision, reversed.

The Supreme Court noted the interplay between public employees’ statutory rights and provisions of a collective bargaining agreement,¹⁵ noting that “when the [collective bargaining] agreement makes no specification about a matter pertaining to wages, hours and terms and conditions of employment, the parties are governed by all state or local laws addressing such

¹² Article 25, Section 25.01(A).

¹³ *Id.*

¹⁴ Plaintiffs’ Supplemental Brief after Oral Argument, at 3.

¹⁵ *Id.*, at 89 Ohio St. 3d 196.

terms and conditions of employment.”¹⁶ In other words, the CBA will prevail over the state statute, provided the CBA “*specifically exclude[s]* statutory rights to negate the application of those rights.”¹⁷ The Court’s decision makes it clear that a CBA’s “general layoff and recall provision” by itself was not sufficient to address the specific issue raised by the board’s action.

Another point of significance in this case is the Supreme Court’s noting that “[W]e must construe the language of the parties’ agreement to avoid a ‘manifest absurdity.’”¹⁸

This is, in essence, the point Plaintiffs are making here: the CBA could not reasonably have anticipated that one or more prisons would have been sold, and the rights of the employees would have been thus affected.¹⁹ Since the CBA could not “specifically exclude” statutory rights that did not exist at the time the CBA was entered into, it becomes a manifest absurdity to try to apply the CBA to a situation that could not reasonably have been foreseen. And if one only wishes to apply existing law (which, under *Batavia*, would seem to be required), that law (in effect now) expressly gives the State of Ohio the right to privatize one or more prisons. Where, then, is the proper forum for aggrieved employees to proceed?

The State Defendants note that the Plaintiffs have two options: the first is the grievance procedure, which has been discussed above, and the second is to pursue an unfair labor practice grievance under SERB, pursuant to R.C. 4711.11. The Defendants note that the CBA, under Article 39, addresses subcontracting. However, the provision quoted by the Defendants permits the employer “to contract out any work it deems necessary or desirable because of greater efficiency, economy, programmatic benefits or other related factors.”²⁰ While this provision is

¹⁶ Id.

¹⁷ Id. (Emphasis in original).

¹⁸ Id., at 198.

¹⁹ Plaintiffs’ Supplemental Brief after Oral Argument, *supra*, at 3.

²⁰ State Defendants’ Post Hearing Brief, at 5, quoting the CBA at Article 39.01.

not necessarily exactly on point, other sections relating to the sale, lease, assignment or transfer of any facility are covered under the CBA.²¹

This Court agrees, to an extent, with the State Defendants here. Clearly, there are articles in the CBA that relate to specific issues raised by the Plaintiffs. However, the underlying problem is that the grievance procedure does not and cannot decide the constitutionality of the statutes at issue here. And pursuing a SERB remedy is equally futile, since an administrator does not possess the authority to determine the constitutionality of a statute. As such, either route is, to all intents and purposes, manifestly useless.

This, therefore, brings us full circle in the discussion. SERB is the proper jurisdictional vehicle to pursue questions involving public employees. But pursuing a SERB resolution (or a grievance procedure) is, in this case at least, by definition useless. This brings this Court back to the *Batavia* decision's language that the law cannot require a "manifest absurdity."²²

The solution to this seeming dilemma goes back to the jurisdictional question. It must be remembered that the lack of jurisdiction must be "patent and unambiguous." To this Court, the lack of jurisdiction is probable, but under these circumstances it does not rise to the level of patent and unambiguous.

If this Court has jurisdiction, and given the above, it now must proceed as if it does, the issue of Standing must be reconsidered. Clearly, the lack of standing previously noted is based on the jurisdiction of SERB to determine the "public employee" questions. Absent the ability of this Court to consider the status of the employee plaintiffs, those persons, as well as the OCSEA,

²¹ Id., quoting Article 44.06 ("Successor"). Other provisions noted affect closure of a facility (Id., and see also Article 36); seniority (Article 16 of the CBA), Layoffs and bumping (Article 18), and the work week, schedules and overtime (Article 13).

²² Granted, the language in *Batavia* covered a different situation, the language of the parties' agreement. But the general principle of avoiding absurdity can hardly be considered novel.

and therefore ProgressOhio.org, did not have standing to bring this case. But since this Court now at least arguably has jurisdiction, the individual plaintiffs have standing.

ProgressOhio.org argues here that “standing for one is standing for all.”²³ See, e.g. *ACLU v. Grayson County* (6th Cir. 2010), 591 F.3d 837, 843, citing *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 52, n.2 (2006). The 6th Circuit in *Grayson County*, after citing that rule, then noted, a few paragraphs later, that since “Meredith has standing, there is no need to address the standing of the other plaintiffs.”²⁴ The state defendants cite an earlier 6th Circuit decision indicating that the aforementioned principle is a “misstatement of the law,” but because the above decisions post-date *National Rifle Association of America v. Magaw*, 132 F.3d 272 (6th Cir. 1997), and because the United States Supreme Court has opined on the issue, this Court cannot ignore the more recent precedent.

Based on the foregoing, the plaintiffs have standing to pursue these claims. This Court will now proceed to the merits of the Motion to Dismiss.

3. The Single Subject Rule

This Court, in Case No. 2011 CV 10647, exhaustively considered whether or not the legislation contained in the bill involving the privatization of prisons violated the One Subject Rule. Because the Court therein conducted an exhaustive research of the precedents, and there has been nothing determined since that time that contradicts that finding, this Court will repeat that portion of the previous decision below. In so doing, the Court reiterates that it has Shepardized *State v. Bloomer* and has found no decisions from the appellate courts that have further discussed the One Subject Rule.

²³ Plaintiffs’ Memorandum Contra, at p. 16.

²⁴ *Id.*, at 843.

Article II, Section 15(D) of the Ohio Constitution reads as follows: "No bill shall contain more than one subject, which shall be clearly expressed in its title."

"The one-subject rule was added to our Constitution in 1851. It was one of the proposals resulting from the efforts of the Second Constitutional Convention, of 1850-1851. See Kulewicz, *The History of the One-Subject Rule of the Ohio Constitution* (1997), 45 *Cleve.St.L.Rev.* 591, 591-593. The genesis of support for this rule had its roots in the same concerns over the General Assembly's dominance of state government that formed the most significant theme of the Constitution of 1851. These concerns, illustrated earlier in this opinion, resulted in the placement of concrete limits on the power of the General Assembly to proceed however it saw fit in the enactment of legislation. The one-subject rule is one product of the drafters' desire to place checks on the legislative branch's ability to exploit its position as the overwhelmingly pre-eminent branch of state government prior to 1851."

The rule derives in part from the prevailing antipathy toward the manner and means by which the General Assembly exercised its pre-1851 power to enact special laws. By virtue of this power, the General Assembly "became heavily involved in the subsidization of private companies and the granting of special privileges in corporate charters. The General Assembly passed a number of Acts * * * designed to loan credit or give financial aid to private canal, bridge, turnpike, and railroad companies. * * * 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." *Id.* at 464, 715 N.E.2d 1062. Concurrently, special charters or bills of incorporation were often assured passage through a system of logrolling, i.e., the practice of combining and thereby obtaining passage for several distinct legislative proposals that would probably have failed to gain majority support if presented and voted on separately. *Id.* at 495-496, 715 N.E.2d 1062. In limiting each bill to a single subject, the one-subject rule strikes at the heart of logrolling by essentially vitiating its product.

In re Nowak (2004), 104 Ohio St. 3d 466, at ¶¶30-31. *Nowak* settled a long-standing issue by holding that the Single Subject rule was mandatory, not directory, in nature.

In recent years, the Ohio Supreme Court has considered this issue on numerous occasions. The most recent decision sets forth a number of general principles very clearly.

Our role in the enforcement of the one subject provision is limited. To avoid interfering with the legislative process, we must afford the General Assembly 'great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject.' *State, ex rel.*

Ohio Civ. Serv. Emps. Assn., AFSCME Local 11, AFL-CIO v. State Emp. Relations Bd., 104 Ohio St. 3d 122, 2004 Ohio 6363, 818 N.E. 2d 688, quoting *Dix*, 11 Ohio St. 3d at 145... We have further emphasized that “every presumption in favor of the enactment’s validity should be indulged.” *Hoover v. Franklin County Bd. of Commrs.* (1985), 19 Ohio St. 3d 1, 6...

State v. Bloomer (2009), 122 Ohio St. 3d 200, at ¶¶47 and 48.

Bloomer goes on to note that not every violation of the one-subject rule requires a finding of unconstitutionality. A violation must be “manifestly gross and fraudulent” before an enactment may be invalidated. *Id.*, at ¶49. So long as there is a common purpose or relationship between topics, “the mere fact that a bill embraces more than one topic will not be fatal.” *Id.*

Subsequent paragraphs in *Bloomer* give examples of statutes that were found not to violate the one-subject rule. Of particular interest to this decision is the example given in *State, ex rel. Willke, v. Taft* (2005), 107 Ohio St. 3d 1. There, the Supreme Court upheld a resolution proposing an amendment to the Ohio Constitution authorizing the issuance of general obligation bonds for (1) funding public infrastructure capital improvements, (2) research and development, and (3) the development of certain business sites and facilities. This combination of the three programs into one amendment was “seemingly the product of a tactical decision”,²⁵ this decision was “not so incongruous that it could not, by any reasonable interpretation, be considered germane to the purposes of statewide job creation and development.”²⁶

The Ohio Supreme Court contrasted the above decisions from those that invalidated certain statutes. Thus, in *State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward* (1999), 86 Ohio St. 3d 451, the Supreme Court struck down a tort reform bill that tried to “combine the wearing of seat belts with employment discrimination claims, class actions arising from the sale of securities with limitations on agency liability in actions against a hospital, [and] actions by a

²⁵ *Bloomer*, at ¶51, citing *Willke*, supra, at ¶38.

²⁶ *Id.*

roller skater with supporting affidavits on a medical claim.” *Id.*, at 497-498, quoted in *Bloomer, supra*, at ¶52. Of particular interest to this decision is the decision in *State, ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME Local 11, AFL-CIO, v. State Emp. Relations Bd.*, 104 Ohio St. 3d 122. There, the Supreme Court invalidated a statutory provision that excluded certain employees from a collective bargaining process when that provision was enacted as part of an appropriations bill encompassing a wide range of budgetary concerns.²⁷

In *Nowak, supra*, the Supreme Court invalidated a provision that attempted to settle whether recorded mortgages were presumptively valid where those mortgages contained violations of other sections of the Revised Code such as having only one witness (former R.C. 5301.234). The basis for the invalidity was that the statute, which was included in an appropriations bill, simply had no common purpose or relationship with the remainder of the statute.

Another key component of *Nowak* is that where there is a clear disunity, no further evidence of fraud or logrolling is required. As that Court noted,

In other words, the one-subject provision does not require evidence of fraud or logrolling beyond the unnatural combinations themselves. Instead, "an analysis of any particular enactment is dependent upon the particular language and subject matter of the proposal," rather than upon extrinsic evidence of logrolling, and thus "an act which contains such unrelated provisions must necessarily be held to be invalid in order to effectuate the purposes of the rule." *Id.* at 145, 11 OBR 436, 464 N.E.2d 153. Otherwise, we are left with the anomalous proposition that a bill containing more than one subject does not violate a constitutional provision that prohibits a bill from containing more than one subject.

Id., at ¶71.

²⁷ Cited in *Bloomer*, at ¶52. The significance here is that this case also involved an appropriations bill. See also: *Akron Metropolitan Housing Authority Board of Trustees v. State of Ohio* (2008), Franklin App. No. 07 AP-738, 2008 Ohio ---- (rejecting "modifying local authority"/"authority to regulate local housing" as being too vague or not connected with the stated rationale.)

With these principles in mind, we turn to the instant case. R.C. 812.20 references the enactment, amendment or repeal of approximately 388 different sections and/or subsections of the Revised Code. As Plaintiffs point out in paragraph 50 of their Complaint, H.B. 153 contains many subjects that are quite diverse, among them the elimination of a prior felony as a bar to the issuance or renewal of a barber's license; the establishment of a gambling hotline; requiring school districts to implement merit-based pay regulations; the modification of the Rules of Evidence relating to expert testimony by a coroner or deputy coroner; creation of a check-off to permit taxpayers to donate all or part of their refund to the Ohio Historical Society; a prohibition of non-therapeutic abortions in specific places such as public hospitals and clinics; and the elimination of all collective bargaining rights for Ohio Turnpike employees.²⁸

In *Simmons-Harris v. Goff* (1999), 86 Ohio St. 3d 1, the Ohio Supreme Court otherwise upheld the constitutionality of the "school voucher program", except for finding that that section's inclusion into the appropriations bill violated the Single Subject Rule. The Supreme Court found a "blatant disunity" between the school voucher program and the remainder of the statutes in the bill. *Id.*, at 16.

The *Goff* decision is noteworthy because of some parallels with the instant case. As the Supreme Court noted,

Am.Sub.H.B. No. 117 contains many other examples of topics that "lack a common purpose or relationship." Am.Sub.H.B. No. 117 contained three hundred eighty-three amendments in twenty-five different titles of the Revised Code, ten amendments to renumber, and eighty-one new sections in sixteen different titles of the Revised Code. Baldwin's Ohio Legislative Service (1995) L-621-622.

Id., at 15 (footnote omitted).

²⁸ Plaintiffs Complaint lists more examples than are cited here. But the above is a fair sample.

The Supreme Court did not consider the constitutionality of the other sections of Am.Sub.H.B. No. 117, many of the provisions of which “appear [to be] unrelated”, *Id.*, but that was because the relief sought was limited to the school voucher program.

Here, Plaintiffs’ demand for relief asks that this Court declare H.B. 153 to be unconstitutional in its entirety.²⁹ However, the remainder of Count One strictly refers to those sections of the Revised Code that relate to the privatization of a portion of the prison system. In addition, Plaintiffs relate some, but not all, of the alleged violations of H.B. 153. This Court, therefore, will follow the lead of the Ohio Supreme Court in *Goff* and refrain from making a declaration as to the constitutionality of those sections of H.B. 153 that have not actually been argued here, at least insofar as the ruling on Plaintiffs’ Motion for a Temporary Restraining Order is concerned. This Court will note, however, that the same language used in *Goff*, i.e. “appear unrelated” certainly *appears* to apply in reference to the instances Plaintiffs cite in H.B. 153.

This Court, however, does not find *Goff* to be controlling as to the prison privatization aspects of H.B. 153 are concerned. In *State, ex rel. Roundtable, v. Taft* (2003), 2003 Ohio 3340, the Tenth District Court of Appeals faced the issue of whether the bill authorizing the Ohio Lottery Commission to participate in multi-state lotteries (the “MegaMillions” game) violated, inter alia, the Single Subject Rule. The Court of Appeals noted, first, that “[a]ssessment of an enactment’s constitutionality will be primarily a matter of a “case-by-case, semantic and contextual analysis,” citing *State, ex rel. Dix, v. Celeste* (1984), 11 Ohio St. 3d 141, 145.

Next, the Court of Appeals held that the statutory provisions authorizing the new lottery game would generate millions of dollars in revenue for Ohio schools, which was “a sufficient

²⁹ Amended Complaint, Count One, ¶168 (A).

common thread with...H.B. 405, which, by the time it was finally enacted, truly had become a budget correction bill primarily concerned with funding.” *Id.*, at ¶49.

In reaching this conclusion, the Court of Appeals cited *Comtech Systems, Inc. v. Limbach* (1991), 59 Ohio St. 3d 96, which held that the “introduction of a stream of revenue was sufficiently related to the core subject of revenues and expenditures to justify inclusion in an appropriations bill.” *Id.*, at ¶50.

Here, while it is clear that a number of provisions of H.B. 153, as cited by Plaintiffs, “appear” to clearly be at odds with the Single Subject Rule, *Goff, supra*, those provisions are considerably different than the sections before this Court that deal with prison privatization. As in *Roundtable*, the purpose of the privatization bill is to generate a stream of revenue to, in this instance, help balance the budget. This is certainly a connected subject to an appropriations bill.³⁰ At the very least, it is not a “manifestly gross or fraudulent” violation of the Single Subject requirement.

Whether the other sections of H.B. 153 that are cited by Plaintiffs are actually in violation of the Single Subject Rule does not affect the outcome regarding the prison privatization portions of this bill (which is what Plaintiffs’ action is really about). As Plaintiffs acknowledge, the remedy of severability exists in the event that any portion of a bill are found to be in violation of the Single Subject Rule.

Based on all the foregoing, this Court finds that the prison privatization portions of H.B. 153 are not in violation of the Single Subject Rule.

³⁰ Plaintiffs note in their Complaint that the prison privatization portions of H.B. 153 were attached by way of a “rider.” While there have been comments in a number of cases as to the suspect nature of a rider, whether this portion of H.B. 153 came to be a part of the bill as being part of the original legislation or by some other method, the fact is that the manner in which a court is to determine whether a violation of the Single Subject Rule exists is to examine whether a “disunity” exists between the contested section (s) and the bill in its entirety.

4. Prohibition Against Joining Property Rights

The next basis upon which Plaintiffs assert a Constitutional violation is in reference to Article Eight, Section 4 of the Ohio Constitution. That section reads in pertinent part as follows:

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 or association in this state, or elsewhere, formed for any purpose whatsoever.

In essence, the statutory provisions require the private contractor to operate and maintain the prison in a lawful manner.

R.C. 753.10 permits the director of the ODRC to award contracts for the operation and management of up to five (5) prison facilities. The provisions of this section authorize, inter alia, the Governor to execute the necessary deed(s) to the respective property.

In reviewing these statutes and comparing them to the Constitutional prohibition, this Court cannot conclude that the legislation at issue is in violation of this prohibition. The State of Ohio simply does not become a joint owner. Regulatory oversight—which occurs in many facets of state government—is not the same as joint ownership. Furthermore, because of the many constitutional requirements, under both the United States and Ohio Constitutions, relating to the operation of prisons and the treatment of prisoners, it seems clearly necessary for the State, in attempting to privatize a portion of the prison system, to create and enforce rules relating to the operation of such prisons. Finally, those cases cited by Defendants in their Memorandum In Opposition, at 11, are persuasive on this issue.

Based on the foregoing, the challenged legislation does not violate Article Eight, Section 4 of the Ohio Constitution.

5. Right of Referendum

Plaintiffs next allege that the R.C. 9.06, 753.10 and 812.20, as amended by H.B. 153, violate the Right of Referendum as that right is set forth in Article II, Section 1, 1c and 1d of the Ohio Constitution.

In pertinent part, Article II, Section 1 reads as follows:

The legislative power of the state shall be vested in a general assembly consisting of a senate and a house of representatives but the people reserve to themselves the power to...adopt and reject [laws] at the polls on a referendum vote as hereinafter provided.

Article II, Section 1c reads in pertinent part as follows:

No law passed by the general assembly shall go into effect until ninety days after it shall have been filed with the governor in the office of the secretary of state, except as herein provided.

Article II, Section 1d reads in pertinent part as follows:

Laws providing for tax levies, appropriations for the current expenses of state government and state institutions, and emergency laws necessary for the preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye or nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for the necessity shall be set forth in one section of the law, which shall be passed only upon a ye or nay vote, upon a separate roll call thereon.

The Ohio Supreme Court has stated on numerous occasions that the right of referendum is “of paramount importance” to the citizens of Ohio. *State, ex rel. LetOhioVote.org, v. Brunner* (2009), 123 Ohio St. 3d 322, at ¶18, citing *State, ex rel. Ohio General Assembly, v. Brunner* (2007), 115 Ohio St. 3d 103.

Defendants do not deny the importance of the right of referendum, and they clearly cannot assert (nor do they) that H.B. 153 passed as an “emergency measure” as set forth in Article II, Section 1d of the Ohio Constitution. Defendants’ arguments are that none of the Plaintiffs, and no one either connected or not connected with this case has even begun the separate referendum process. Because no steps have been attempted to place the referendum on

the ballot, Defendants argue that Plaintiffs lack standing to “complain about the effective date of the budget bill and whether it infringes on the right to referendum.”³¹

Defendants’ arguments, as made in 2011, are of questionable validity. Before speaking to this action, the Court will review the questionable validity of those arguments when made in 2011. First, in order to commence a referendum action, one must follow the law which provides the means by which a referendum may occur.

The Ohio Constitution states that “No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state...” Article II, Section 1c, Ohio Constitution. This ninety day period is required because it is precisely that time period in which a referendum petition is to be filed with the Secretary of State. **Id.** Since the Ohio Constitution requires that the referendum petition be filed within ninety days “after any law shall have been filed by the governor in the office of the secretary of state”, it appears that once the law goes into effect, the right of referendum has ended.³²

In this instance, H.B. 153, by its own terms, went into effect *immediately*. Whether R.C. 9.06 and R.C. 753.10 can be considered to be exempt from the referendum requirement depends on whether they meet the stated exceptions to that requirement. Those exceptions are contained in Article II, Section 1d of the Ohio Constitution.

It is abundantly clear that the exceptions relating to “tax levies” and “emergency laws for the preservation of the public peace, health or safety” do not apply here. Therefore, the key question is whether the remaining exception, “appropriations for the current expenses of the state

³¹ Memorandum in Opposition, at 9.

³² This is one question that the Court has not had time to address. It appears that the 90 day requirement regarding both the filing of a referendum petition and the effective date of a non-emergency law is not coincidental, and the date the law goes into effect is the day the referendum right ends. If either of the parties disagrees, the Court would appreciate further information.

government and state institutions,” applies. Does the sale of prisons constitute an “appropriation”? Based on binding precedent, this Court holds that it does not.

One of the key questions before the Supreme Court in *State, ex rel. LetOhioVote.org, v. Brunner, supra* was the interpretation of this third exception—appropriations—to the referendum requirement.

First, the Court set the ground rules regarding the interpretation of that provision:

In construing these exceptions, "we must 'read words and phrases in context according to the rules of grammar and common usage.'" *State ex rel. Colvin v. Brunner*, 120 Ohio St. 3d 110, 2008 Ohio 5041, P 43, 896 N.E.2d 979, quoting *State ex rel. Lee v. Karnes*, 103 Ohio St. 3d 559, 2004 Ohio 5718, P 23, 817 N.E.2d 76. We liberally construe the powers of initiative and referendum to effectuate the rights reserved. *State ex rel. Evans v. Blackwell*, 111 Ohio St. 3d 1, 2006 Ohio 4334, P 32, 854 N.E.2d 1025. Further, "[i]n view of the great precaution taken by the constitutional convention of 1912 to set forth and safeguard, with the particularity of detail usually found only in legislative acts, the right of referendum, and the three exceptions thereto, our court should not deny the people that right, *unless the act in question is plainly and persuasively included within one of the three classes excepted from the operation of the referendum.*" (Emphasis added.) *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 467-468, 1 Ohio Law Abs. 698, 141 N.E. 16. These exceptions to the general rule of referendum must be strictly, but reasonably, construed. *Id.* at paragraphs one and two of the syllabus.

Id., at ¶24. The emphasis noted in the paragraph was placed there by the Supreme Court.

The Supreme Court then defined what an “appropriation” is.

An appropriation is "an authorization granted by the general assembly to make expenditures and to incur obligations for specific purposes." R.C. 131.01(F). Similarly, in *State ex rel. Akron Edn. Assn. v. Essex* (1976), 47 Ohio St.2d 47, 49, 1 O.O.3d 28, 351 N.E.2d 118, we explained that the ordinary and common meaning of the phrase "appropriation bill" is a "measure before a legislative body which authorizes 'the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure.'" *Id.* at 49, quoting Webster's New International Dictionary (2d Ed.). See also Black's Law Dictionary (9th Ed.2009) 117-118 (defining "appropriation" to mean "[a] legislative body's act of setting aside a sum of money for a public purpose").

Id., at ¶28.

The Supreme Court expressly **rejected** the argument that because funds are generated—in that case by sales from video lottery terminals (and in this case by the sale of prison(s) and surrounding property)—that this makes them “appropriations.” By the definitions given by the Ohio Supreme Court, it is clear that generated funds from the sale of prison facilities cannot be “appropriations.”

It can also be argued that the sale of prisons and the revenue such a sale would provide are “inextricably linked” to appropriations, and therefore should be permitted as an exception to the referendum requirement. However, this precise argument was raised—and rejected—in *LetOhioVote.org*. The Supreme Court held:

There is no authority in our precedent that would permit the referendum exception to apply to provisions that, once implemented, raise revenue to provide funds for an appropriation in another part of the act, even if -- as the intervening respondents claim -- they are "inextricably tied" or related to each other.

Id., at ¶35.

Finally, it must be noted that the statutes in question are permanent in nature, and the Supreme Court in *LetOhioVote.org* held that any section of the law “which changes the permanent law of the state is subject to referendum under the powers reserved to the people by Section 1 of Article II, even if the law also contains a section providing for an appropriation for the current expenses of state government.” **Id.**, at ¶45.

Based on the foregoing, the contested statutes do not fit within any of the three exceptions to the referendum requirement set forth in the Ohio Constitution.

The conclusions that may be reached from the foregoing are that, first, the portion of H.B. 153 relating to R.C. 9.06 and R.C. 753.10 should have been subject to the referendum requirement, and second, that because they (and the rest of H.B. 153) went into effect

immediately, Plaintiffs had no recourse to the right of referendum.³³ Since Plaintiffs (and any other Ohio citizen) should have had that right, and because they could not have pursued it even if they wished based upon the manner in which this legislation was passed, this Court cannot say that they lack standing to make the arguments concerning the referendum issue. At the time of the filing of the 2011 case, the lack of recourse was most troubling to this Court.

Of course, intervening events have taken place since this Court first reviewed this issue last year. Specifically, Plaintiffs—or at least the ones involved in the earlier case—dismissed that case pursuant to Civ.R. 41(A), and it is admitted on both sides in oral argument on this Motion to Dismiss that there was no effort to seek, obtain, or file referendum petitions from or with the Secretary of State. Defendants' argument that the Plaintiffs have done nothing to exercise their right of referendum at any time does, after the passage of so much time, become telling. At this point, that is to say, by July of 2012, the Court agrees that this inactivity is fatal to the seeking of the referendum remedy.

Based on the foregoing, the Motion to Dismiss is SUSTAINED, and this case is dismissed. This is a final appealable order.

Copies to: all counsel.

³³ As noted supra, this conclusion assumes that a referendum action can only be brought during the time a bill has not become "effective."

Franklin County Court of Common Pleas

Date: 11-20-2012
Case Title: OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION ET AL -
VS- OHIO STATE ET AL
Case Number: 12CV008716
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in cursive script, which appears to read "Patrick E. Sheeran". The signature is written over a circular official seal. The seal is partially obscured by the ink of the signature but contains some text and a central emblem, likely representing the court or the judge's office.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 12CV008716

Case Style: OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
ET AL -VS- OHIO STATE ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0087162012-09-0799970000
Document Title: 09-07-2012-MOTION TO DISMISS
Disposition: MOTION GRANTED

AN ACT

To amend sections 7.10, 7.11, 7.12, 9.06, 9.231, 9.24, 9.33, 9.331, 9.332, 9.333, 9.82, 9.823, 9.833, 9.90, 9.901, 101.532, 101.82, 102.02, 105.41, 107.09, 109.36, 109.43, 109.57, 109.572, 109.64, 109.71, 109.801, 111.12, 111.16, 111.18, 117.101, 117.13, 118.023, 118.04, 118.05, 118.06, 118.12, 118.17, 118.99, 119.032, 120.40, 121.03, 121.04, 121.22, 121.37, 121.40, 121.401, 121.402, 121.403, 121.404, 122.121, 122.171, 122.76, 122.861, 123.01, 123.011, 123.10, 124.09, 124.23, 124.231, 124.24, 124.25, 124.26, 124.27, 124.31, 124.34, 124.393, 124.85, 125.021, 125.15, 125.18, 125.28, 125.89, 126.11, 126.12, 126.21, 126.24, 126.45, 126.46, 126.50, 127.14, 127.16, 131.02, 131.23, 131.44, 131.51, 133.01, 133.06, 133.09, 133.18, 133.20, 133.55, 135.05, 135.61, 135.65, 135.66, 145.27, 145.56, 149.01, 149.091, 149.11, 149.311, 149.351, 149.38, 149.39, 149.41, 149.411, 149.412, 149.42, 149.43, 153.01, 153.02, 153.03, 153.07, 153.08, 153.50, 153.51, 153.52, 153.54, 153.56, 153.581, 153.65, 153.66, 153.67, 153.69, 153.70, 153.71, 153.80, 154.02, 154.07, 154.11, 166.02, 173.14, 173.21, 173.26, 173.35, 173.351, 173.36, 173.391, 173.40, 173.401, 173.403, 173.404, 173.42, 173.45, 173.46, 173.47, 173.48, 173.501, 183.30, 183.51, 185.01, 185.03, 185.06, 185.10, 187.01, 187.02, 187.03, 187.09, 301.02, 301.15, 301.28, 305.171, 306.35, 306.43, 306.70, 307.022, 307.041, 307.10, 307.12, 307.676, 307.70, 307.79, 307.791, 307.80, 307.801, 307.802, 307.803, 307.806, 307.81, 307.82, 307.83, 307.84, 307.842,

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124.394, 125.182, 125.213, 126.141, 126.60, 126.601, 126.602, 126.603, 126.604, 126.605, 127.162, 127.19, 131.024, 149.308, 149.381, 153.501, 153.502, 153.503, 153.53, 153.55, 153.692, 153.693, 153.694, 153.72, 153.73, 154.24, 154.25, 167.081, 173.41, 187.13, 189.01, 189.02, 189.03, 189.04, 189.05, 189.06, 189.07, 189.08, 189.09, 189.10, 305.23, 306.322, 306.55, 306.551, 307.847, 317.06, 505.483, 505.484, 505.551, 523.01, 523.02, 523.03, 523.04, 523.05, 523.06, 523.07, 709.451, 709.452, 1327.501, 1505.05, 1509.022, 1571.012, 1571.013, 1571.014, 1702.461, 1702.462, 2151.429, 2335.061, 3123.591, 3302.042, 3302.06, 3302.061, 3302.062, 3302.063, 3302.064, 3302.065, 3302.066, 3302.067, 3302.068, 3302.12, 3302.20, 3302.21, 3302.22, 3302.25, 3302.30, 3310.51, 3310.52, 3310.521, 3310.522, 3310.53, 3310.54, 3310.55, 3310.56, 3310.57, 3310.58, 3310.59, 3310.60, 3310.61, 3310.62, 3310.63, 3310.64, 3311.0510, 3313.411, 3313.538, 3313.617, 3313.846, 3313.88, 3314.029, 3314.102, 3314.23, 3317.141, 3318.054, 3318.371, 3318.48, 3318.49, 3318.60, 3318.70, 3319.0810, 3319.228, 3319.229, 3319.58, 3323.052, 3324.08, 3326.111, 3328.01 to 3328.04, 3328.11 to 3328.15, 3328.17 to 3328.19, 3328.191, 3328.192, 3328.193, 3328.20 to 3328.26, 3328.31 to 3328.36, 3328.41, 3328.45, 3328.50, 3328.99, 3333.0411, 3333.43, 3345.023, 3345.54, 3345.55, 3345.81, 3353.15, 3701.0211, 3701.032, 3702.523, 3709.341, 3721.531, 3721.532, 3721.533, 3734.577, 3745.016, 3770.031, 3793.061, 3901.56, 3903.301, 4313.01, 4313.02, 4729.50, 4911.021, 5101.57, 5111.0122, 5111.0123, 5111.0124, 5111.0125, 5111.0212, 5111.0213, 5111.0214, 5111.0215, 5111.035, 5111.051, 5111.052, 5111.053,

5111.054, 5111.063, 5111.086, 5111.161, 5111.1711, 5111.212, 5111.224, 5111.225, 5111.226, 5111.259, 5111.271, 5111.331, 5111.511, 5111.83, 5111.862, 5111.863, 5111.864, 5111.865, 5111.944, 5111.945, 5111.981, 5112.991, 5119.012, 5119.013, 5119.622, 5119.623, 5119.693, 5120.092, 5122.341, 5123.0418, 5123.0419, 5703.059, 5725.34, 5729.17, 5747.81, 5748.09, 6115.321, and 6119.061; and to repeal sections 7.14, 122.0818, 122.452, 126.04, 126.501, 126.502, 126.507, 165.031, 179.01, 179.02, 179.03, 179.04, 181.22, 181.23, 181.24, 181.25, 340.08, 701.04, 1501.031, 1551.13, 3123.52, 3123.61, 3123.612, 3123.613, 3123.614, 3301.82, 3301.922, 3306.01, 3306.011, 3306.012, 3306.02, 3306.03, 3306.04, 3306.05, 3306.051, 3306.052, 3306.06, 3306.07, 3306.08, 3306.09, 3306.091, 3306.10, 3306.11, 3306.13, 3306.19, 3306.191, 3306.192, 3306.21, 3306.22, 3306.29, 3306.291, 3306.292, 3306.50, 3306.51, 3306.52, 3306.53, 3306.54, 3306.55, 3306.56, 3306.57, 3306.58, 3306.59, 3311.059, 3313.674, 3314.014, 3314.016, 3314.017, 3314.025, 3314.082, 3314.085, 3314.11, 3314.111, 3317.011, 3317.016, 3317.017, 3317.0216, 3317.04, 3317.17, 3319.112, 3319.62, 3329.16, 3335.45, 3349.242, 3706.042, 3721.56, 3722.99, 3733.21, 3733.22, 3733.23, 3733.24, 3733.25, 3733.26, 3733.27, 3733.28, 3733.29, 3733.30, 3923.90, 3923.91, 4115.032, 4121.75, 4121.76, 4121.77, 4121.78, 4121.79, 4582.37, 4731.18, 4981.23, 5101.5211, 5101.5212, 5101.5213, 5101.5214, 5101.5215, 5101.5216, 5111.243, 5111.34, 5111.861, 5111.893, 5111.971, 5122.36, 5123.172, 5123.181, 5123.193, 5123.211, 5126.18, and 5126.19 of the Revised Code; to amend Section 5 of Am. Sub. H.B. 1 of the

129th General Assembly, Section 205.10 of Am. Sub. H.B. 114 of the 129th General Assembly, Section 211 of Sub. H.B. 123 of the 129th General Assembly, Section 5 of Am. Sub. S.B. 2 of the 129th General Assembly, Sections 125.10 and 753.60 of Am. Sub. H.B. 1 of the 128th General Assembly, Section 105.20 of Sub. H.B. 462 of the 128th General Assembly, Section 105.45.70 of Sub. H.B. 462 of the 128th General Assembly, as subsequently amended, Section 6 of Am. Sub. S.B. 124 of the 128th General Assembly, Section 5 of Sub. S.B. 162 of the 128th General Assembly, Section 5 of Sub. H.B. 125 of the 127th General Assembly, as subsequently amended, and Section 153 of Am. Sub. H.B. 117 of the 121st General Assembly, as subsequently amended; to repeal Section 6 of Sub. S.B. 162 of the 128th General Assembly and Section 5 of Sub. H.B. 2 of the 127th General Assembly; to amend the versions of sections 3721.16, 5122.01, 5122.31, 5123.19, 5123.191, and 5123.60 of the Revised Code that result from Section 101.01 of this act and to amend sections 5111.709, 5119.221, 5122.02, 5122.27, 5122.271, 5122.29, 5122.32, 5123.092, 5123.35, 5123.61, 5123.63, 5123.64, 5123.69, 5123.701, 5123.86, 5123.99, and 5126.33, to amend section 5123.60 (5123.601) for the purpose of adopting a new section number as indicated in parentheses, to enact new sections 5123.60 and 5123.602, and to repeal sections 5123.601, 5123.602, 5123.603, 5123.604, and 5123.605 of the Revised Code on October 1, 2012; to make operating appropriations for the biennium beginning July 1, 2011, and ending June 30, 2013; and to provide authorization and conditions for the operation of programs, including reforms for the efficient and

effective operation of state and local government.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 101.01. That sections 7.10, 7.11, 7.12, 9.06, 9.231, 9.24, 9.33, 9.331, 9.332, 9.333, 9.82, 9.823, 9.833, 9.90, 9.901, 101.532, 101.82, 102.02, 105.41, 107.09, 109.36, 109.43, 109.57, 109.572, 109.64, 109.71, 109.801, 111.12, 111.16, 111.18, 117.101, 117.13, 118.023, 118.04, 118.05, 118.06, 118.12, 118.17, 118.99, 119.032, 120.40, 121.03, 121.04, 121.22, 121.37, 121.40, 121.401, 121.402, 121.403, 121.404, 122.121, 122.171, 122.76, 122.861, 123.01, 123.011, 123.10, 124.09, 124.23, 124.231, 124.24, 124.25, 124.26, 124.27, 124.31, 124.34, 124.393, 124.85, 125.021, 125.15, 125.18, 125.28, 125.89, 126.11, 126.12, 126.21, 126.24, 126.45, 126.46, 126.50, 127.14, 127.16, 131.02, 131.23, 131.44, 131.51, 133.01, 133.06, 133.09, 133.18, 133.20, 133.55, 135.05, 135.61, 135.65, 135.66, 145.27, 145.56, 149.01, 149.091, 149.11, 149.311, 149.351, 149.38, 149.39, 149.41, 149.411, 149.412, 149.42, 149.43, 153.01, 153.02, 153.03, 153.07, 153.08, 153.50, 153.51, 153.52, 153.54, 153.56, 153.581, 153.65, 153.66, 153.67, 153.69, 153.70, 153.71, 153.80, 154.02, 154.07, 154.11, 166.02, 173.14, 173.21, 173.26, 173.35, 173.351, 173.36, 173.391, 173.40, 173.401, 173.403, 173.404, 173.42, 173.45, 173.46, 173.47, 173.48, 173.501, 183.30, 183.51, 185.01, 185.03, 185.06, 185.10, 187.01, 187.02, 187.03, 187.09, 301.02, 301.15, 301.28, 305.171, 306.35, 306.43, 306.70, 307.022, 307.041, 307.10, 307.12, 307.676, 307.70, 307.79, 307.791, 307.80, 307.801, 307.802, 307.803, 307.806, 307.81, 307.82, 307.83, 307.84, 307.842, 307.843, 307.846, 307.86, 308.13, 311.29, 311.31, 317.20, 319.11, 319.301, 319.54, 321.18, 321.261, 322.02, 322.021, 323.08, 323.73, 323.75, 324.02, 324.021, 325.20, 340.02, 340.03, 340.05, 340.091, 340.11, 341.192, 343.08, 345.03, 349.03, 501.07, 503.05, 503.162, 503.41, 504.02, 504.03, 504.12, 504.16, 504.21, 505.101, 505.105, 505.106, 505.107, 505.108, 505.109, 505.17, 505.172, 505.24, 505.264, 505.267, 505.28, 505.373, 505.43, 505.48, 505.481, 505.49, 505.491, 505.492, 505.493, 505.494, 505.495, 505.50, 505.51, 505.511, 505.52, 505.53, 505.54, 505.541, 505.55, 505.60, 505.601, 505.603, 505.61, 505.67, 505.73, 507.09, 509.15, 511.01, 511.12, 511.23, 511.235, 511.236, 511.25, 511.28, 511.34, 513.14, 515.01, 515.04, 515.07, 517.06, 517.12, 517.22, 521.03, 521.05, 705.16, 709.43, 709.44, 711.35, 715.011, 715.47, 718.01, 718.09, 718.10, 719.012, 719.05, 721.03, 721.15, 721.20, 723.07, 727.011, 727.012, 727.08, 727.14, 727.46, 729.08, 729.11, 731.14, 731.141, 731.20, 731.21, 731.211, 731.22, 731.23, 731.24,

state, except that "political subdivision" does not include either of the following:

(a) A municipal corporation;

(b) A county that has adopted a charter under Section 3 of Article X, Ohio Constitution, to the extent that it is exercising the powers of local self-government as provided in that charter and is subject to Section 3 of Article XVIII, Ohio Constitution.

(4) "State" has the same meaning as in section 2744.01 of the Revised Code means the state of Ohio, including the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

(B) Subject to division (C) of this section, but notwithstanding other provisions of the Revised Code that conflict with the prohibition specified in this division, funds of the state or any political subdivision thereof shall not be expended directly or indirectly to pay the costs, premiums, or charges associated with a policy, contract, or plan if the policy, contract, or plan provides coverage, benefits, or services related to a nontherapeutic abortion.

(C) Division (B) of this section does not preclude the state or any political subdivision thereof from expending funds to pay the costs, premiums, or charges associated with a policy, contract, or plan that includes a rider or other provision offered on an individual basis under which an elected or appointed official or employee who accepts the offer of the rider or provision may obtain coverage of a nontherapeutic abortion through the policy, contract, or plan if the individual pays for all of the costs, premiums, or charges associated with the rider or provision, including all administrative expenses related to the rider or provision and any claim made for a nontherapeutic abortion.

(D) In addition to the laws specified in division (A) of section 4117.10 of the Revised Code that prevail over conflicting provisions of agreements between employee organizations and public employers, divisions (B) and (C) of this section shall prevail over conflicting provisions of that nature.

Sec. 9.06. (A)(1) The department of rehabilitation and correction may contract for the private operation and management pursuant to this section of the initial intensive program prison established pursuant to section 5120.033 of the Revised Code, if one or more intensive program prisons are established under that section, and may contract for the private operation and management of any other facility under this section. Counties and municipal corporations to the extent authorized in sections 307.93, 341.35,

753.03, and 753.15 of the Revised Code may contract for the private operation and management of a facility under this section. A contract entered into under this section shall be for an initial term ~~of not more than two years~~ specified in the contract with an option to renew for additional periods of two years.

(2) The department of rehabilitation and correction, by rule, shall adopt minimum criteria and specifications that a person or entity, other than a person or entity that satisfies the criteria set forth in division (A)(3)(a) of this section and subject to division (I) of this section, must satisfy in order to apply to operate and manage as a contractor pursuant to this section the initial intensive program prison established pursuant to section 5120.033 of the Revised Code, if one or more intensive program prisons are established under that section.

(3) Subject to division (I) of this section, any person or entity that applies to operate and manage a facility as a contractor pursuant to this section shall satisfy one or more of the following criteria:

(a) ~~The person or entity is accredited by the American correctional association and,~~ at the time of the application, operates and manages one or more facilities accredited by the American correctional association.

(b) The person or entity satisfies all of the minimum criteria and specifications adopted by the department of rehabilitation and correction pursuant to division (A)(2) of this section, provided that this alternative shall be available only in relation to the initial intensive program prison established pursuant to section 5120.033 of the Revised Code, if one or more intensive program prisons are established under that section.

(4) Subject to division (I) of this section, before a public entity may enter into a contract under this section, the contractor shall convincingly demonstrate to the public entity that it can operate the facility with the inmate capacity required by the public entity and provide the services required in this section and realize at least a five per cent savings over the projected cost to the public entity of providing these same services to operate the facility that is the subject of the contract. No out-of-state prisoners may be housed in any facility that is the subject of a contract entered into under this section.

(B) Subject to division (I) of this section, any contract entered into under this section shall include all of the following:

(1) A requirement that ~~the contractor retain the contractor's accreditation from the American correctional association throughout the contract term or,~~ if the contractor applied pursuant to division (A)(3)(b) of this section, the contractor continue complying with the applicable criteria and specifications

adopted by the department of rehabilitation and correction pursuant to division (A)(2) of this section;

(2) A requirement that all of the following conditions be met:

(a) The contractor begins the process of accrediting the facility with the American correctional association no later than sixty days after the facility receives its first inmate.

(b) The contractor receives accreditation of the facility within twelve months after the date the contractor applies to the American correctional association for accreditation.

(c) Once the accreditation is received, the contractor maintains it for the duration of the contract term.

(d) If the contractor does not comply with divisions (B)(2)(a) to (c) of this section, the contractor is in violation of the contract, and the public entity may revoke the contract at its discretion.

(3) A requirement that the contractor comply with all rules promulgated by the department of rehabilitation and correction that apply to the operation and management of correctional facilities, including the minimum standards for jails in Ohio and policies regarding the use of force and the use of deadly force, although the public entity may require more stringent standards, and comply with any applicable laws, rules, or regulations of the federal, state, and local governments, including, but not limited to, sanitation, food service, safety, and health regulations. The contractor shall be required to send copies of reports of inspections completed by the appropriate authorities regarding compliance with rules and regulations to the director of rehabilitation and correction or the director's designee and, if contracting with a local public entity, to the governing authority of that entity.

(4) A requirement that the contractor report for investigation all crimes in connection with the facility to the public entity, to all local law enforcement agencies with jurisdiction over the place at which the facility is located, and, for a crime committed at a state correctional institution, to the state highway patrol;

(5) A requirement that the contractor immediately report all escapes from the facility, and the apprehension of all escapees, by telephone and in writing to all local law enforcement agencies with jurisdiction over the place at which the facility is located, to the prosecuting attorney of the county in which the facility is located, to the state highway patrol, to a daily newspaper having general circulation in the county in which the facility is located, and, if the facility is a state correctional institution, to the department of rehabilitation and correction. The written notice may be by either facsimile transmission or mail. A failure to comply with this

requirement regarding an escape is a violation of section 2921.22 of the Revised Code.

(6) A requirement that, if the facility is a state correctional institution, the contractor provide a written report within specified time limits to the director of rehabilitation and correction or the director's designee of all unusual incidents at the facility as defined in rules promulgated by the department of rehabilitation and correction or, if the facility is a local correctional institution, that the contractor provide a written report of all unusual incidents at the facility to the governing authority of the local public entity;

(7) A requirement that the contractor maintain proper control of inmates' personal funds pursuant to rules promulgated by the department of rehabilitation and correction for state correctional institutions or pursuant to the minimum standards for jails along with any additional standards established by the local public entity for local correctional institutions and that records pertaining to these funds be made available to representatives of the public entity for review or audit;

(8) A requirement that the contractor prepare and distribute to the director of rehabilitation and correction or, if contracting with a local public entity, to the governing authority of the local entity annual budget income and expenditure statements and funding source financial reports;

(9) A requirement that the public entity appoint and supervise a full-time contract monitor, that the contractor provide suitable office space for the contract monitor at the facility, and that the contractor allow the contract monitor unrestricted access to all parts of the facility and all records of the facility except the contractor's financial records;

(10) A requirement that if the facility is a state correctional institution designated department of rehabilitation and correction staff members be allowed access to the facility in accordance with rules promulgated by the department;

(11) A requirement that the contractor provide internal and perimeter security as agreed upon in the contract;

(12) If the facility is a state correctional institution, a requirement that the contractor impose discipline on inmates housed in ~~a state correctional institution~~ the facility only in accordance with rules promulgated by the department of rehabilitation and correction;

(13) A requirement that the facility be staffed at all times with a staffing pattern approved by the public entity and adequate both to ensure supervision of inmates and maintenance of security within the facility and to provide for programs, transportation, security, and other operational needs.

In determining security needs, the contractor shall be required to consider, among other things, the proximity of the facility to neighborhoods and schools.

(14) If the contract is with a local public entity, a requirement that the contractor provide services and programs, consistent with the minimum standards for jails promulgated by the department of rehabilitation and correction under section 5120.10 of the Revised Code;

(15) A clear statement that no immunity from liability granted to the state, and no immunity from liability granted to political subdivisions under Chapter 2744. of the Revised Code, shall extend to the contractor or any of the contractor's employees;

(16) A statement that all documents and records relevant to the facility shall be maintained in the same manner required for, and subject to the same laws, rules, and regulations as apply to, the records of the public entity;

(17) Authorization for the public entity to impose a fine on the contractor from a schedule of fines included in the contract for the contractor's failure to perform its contractual duties or to cancel the contract, as the public entity considers appropriate. If a fine is imposed, the public entity may reduce the payment owed to the contractor pursuant to any invoice in the amount of the imposed fine.

(18) A statement that all services provided or goods produced at the facility shall be subject to the same regulations, and the same distribution limitations, as apply to goods and services produced at other correctional institutions;

(19) ~~Authorization~~ If the facility is a state correctional institution, authorization for the department to establish one or more prison industries at a the facility operated and managed by a contractor for the department;

(20) A requirement that, if the facility is an intensive program prison established pursuant to section 5120.033 of the Revised Code, the facility shall comply with all criteria for intensive program prisons of that type that are set forth in that section;

(21) If the ~~institution~~ facility is a state correctional institution, a requirement that the contractor provide clothing for all inmates housed in the facility that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as an inmate, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility by non-inmates, that the contractor require all inmates housed in the facility to wear the clothing so provided, and that the contractor not permit any inmate, while inside or on the premises of the facility or while being transported to or from the facility, to wear any clothing of a nature that does

not conspicuously identify its wearer as an inmate and that normally is worn outside the facility by non-inmates.

(C) No contract entered into under this section may require, authorize, or imply a delegation of the authority or responsibility of the public entity to a contractor for any of the following:

(1) Developing or implementing procedures for calculating inmate release and parole eligibility dates and recommending the granting or denying of parole, although the contractor may submit written reports that have been prepared in the ordinary course of business;

(2) Developing or implementing procedures for calculating and awarding earned credits, approving the type of work inmates may perform and the wage or earned credits, if any, that may be awarded to inmates engaging in that work, and granting, denying, or revoking earned credits;

(3) For inmates serving a term imposed for a felony offense committed prior to July 1, 1996, or for a misdemeanor offense, developing or implementing procedures for calculating and awarding good time, approving the good time, if any, that may be awarded to inmates engaging in work, and granting, denying, or revoking good time;

(4) Classifying an inmate or placing an inmate in a more or a less restrictive custody than the custody ordered by the public entity;

(5) Approving inmates for work release;

(6) Contracting for local or long distance telephone services for inmates or receiving commissions from those services at a facility that is owned by or operated under a contract with the department.

(D) A contractor that has been approved to operate a facility under this section, and a person or entity that enters into a contract for specialized services, as described in division (I) of this section, relative to an intensive program prison established pursuant to section 5120.033 of the Revised Code to be operated by a contractor that has been approved to operate the prison under this section, shall provide an adequate policy of insurance specifically including, but not limited to, insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. The insurance policy shall provide that the state, including all state agencies, and all political subdivisions of the state with jurisdiction over the facility or in which a facility is located are named as insured, and that the state and its political subdivisions shall be sent any notice of cancellation. The contractor may not self-insure.

A contractor that has been approved to operate a facility under this section, and a person or entity that enters into a contract for specialized

services, as described in division (I) of this section, relative to an intensive program prison established pursuant to section 5120.033 of the Revised Code to be operated by a contractor that has been approved to operate the prison under this section, shall indemnify and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility, shall reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and shall reimburse any local government entity of that nature for its costs in defending the local government entity, from all of the following:

(1) Any claims or losses for services rendered by the contractor, person, or entity performing or supplying services in connection with the performance of the contract;

(2) Any failure of the contractor, person, or entity or its officers or employees to adhere to the laws, rules, regulations, or terms agreed to in the contract;

(3) Any constitutional, federal, state, or civil rights claim brought against the state related to the facility operated and managed by the contractor;

(4) Any claims, losses, demands, or causes of action arising out of the contractor's, person's, or entity's activities in this state;

(5) Any attorney's fees or court costs arising from any habeas corpus actions or other inmate suits that may arise from any event that occurred at the facility or was a result of such an event, or arise over the conditions, management, or operation of the facility, which fees and costs shall include, but not be limited to, attorney's fees for the state's representation and for any court-appointed representation of any inmate, and the costs of any special judge who may be appointed to hear those actions or suits.

(E) Private correctional officers of a contractor operating and managing a facility pursuant to a contract entered into under this section may carry and use firearms in the course of their employment only after being certified as satisfactorily completing an approved training program as described in division (A) of section 109.78 of the Revised Code.

(F) Upon notification by the contractor of an escape from, or of a disturbance at, the facility that is the subject of a contract entered into under this section, the department of rehabilitation and correction and state and local law enforcement agencies shall use all reasonable means to recapture escapees or quell any disturbance. Any cost incurred by the state or its political subdivisions relating to the apprehension of an escapee or the quelling of a disturbance at the facility shall be chargeable to and borne by

the contractor. The contractor shall also reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of the escapee following recapture.

(G) Any offense that would be a crime if committed at a state correctional institution or jail, workhouse, prison, or other correctional facility shall be a crime if committed by or with regard to inmates at facilities operated pursuant to a contract entered into under this section.

(H) A contractor operating and managing a facility pursuant to a contract entered into under this section shall pay any inmate workers at the facility at the rate approved by the public entity. Inmates working at the facility shall not be considered employees of the contractor.

(I) In contracting for the private operation and management pursuant to division (A) of this section of any intensive program prison established pursuant to section 5120.033 of the Revised Code, the department of rehabilitation and correction may enter into a contract with a contractor for the general operation and management of the prison and may enter into one or more separate contracts with other persons or entities for the provision of specialized services for persons confined in the prison, including, but not limited to, security or training services or medical, counseling, educational, or similar treatment programs. If, pursuant to this division, the department enters into a contract with a contractor for the general operation and management of the prison and also enters into one or more specialized service contracts with other persons or entities, all of the following apply:

(1) The contract for the general operation and management shall comply with all requirements and criteria set forth in this section, and all provisions of this section apply in relation to the prison operated and managed pursuant to the contract.

(2) Divisions (A)(2), (B), and (C) of this section do not apply in relation to any specialized services contract, except to the extent that the provisions of those divisions clearly are relevant to the specialized services to be provided under the specialized services contract. Division (D) of this section applies in relation to each specialized services contract.

(J) If, on or after the effective date of this amendment, a contractor enters into a contract with the department of rehabilitation and correction under this section for the operation and management of any facility described in Section 753.10 of the act in which this amendment was adopted, if the contract provides for the sale of the facility to the contractor, if the facility is sold to the contractor subsequent to the execution of the contract, and if the contractor is privately operating and managing the facility, notwithstanding the contractor's private operation and management

of the facility, all of the following apply:

(1) Except as expressly provided to the contrary in this section, the facility being privately operated and managed by the contractor shall be considered for purposes of the Revised Code as being under the control of, or under the jurisdiction of, the department of rehabilitation and correction.

(2) Any reference in this section to "state correctional institution," any reference in Chapter 2967. of the Revised Code to "state correctional institution," other than the definition of that term set forth in section 2967.01 of the Revised Code, or to "prison," and any reference in Chapter 2929., 5120., 5145., 5147., or 5149. or any other provision of the Revised Code to "state correctional institution" or "prison" shall be considered to include a reference to the facility being privately operated and managed by the contractor, unless the context makes the inclusion of that facility clearly inapplicable.

(3) Upon the sale and conveyance of the facility, the facility shall be returned to the tax list and duplicate maintained by the county auditor, and the facility shall be subject to all real property taxes and assessments. No exemption from real property taxation pursuant to Chapter 5709. of the Revised Code shall apply to the facility conveyed. The gross receipts and income of the contractor to whom the facility is conveyed that are derived from operating and managing the facility under this section shall be subject to gross receipts and income taxes levied by the state and its subdivisions, including the taxes levied pursuant to Chapters 718., 5747., 5748., and 5751. of the Revised Code. Unless exempted under another section of the Revised Code, transactions involving a contractor as a consumer or purchaser are subject to any tax levied under Chapters 5739. and 5741. of the Revised Code.

(4) After the sale and conveyance of the facility, all of the following apply:

(a) Before the contractor may resell or otherwise transfer the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both the facility and real property on which it is situated plus the surrounding land that was transferred under the contract, the contractor first must offer the state the opportunity to repurchase the facility, real property, and surrounding land that is to be resold or transferred and must sell the facility, real property, and surrounding land to the state if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract.

(b) Upon the default by the contractor of any financial agreement for the purchase of the facility and the real property on which it is situated, any

surrounding land that also was transferred under the contract, or both the facility and real property on which it is situated plus the surrounding land that was transferred under the contract, upon the default by the contractor of any other term in the contract, or upon the financial insolvency of the contractor or inability of the contractor to meet its contractual obligations, the state may repurchase the facility, real property, and surrounding land, if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract.

(c) If the contract entered into under this section for the operation and management of a state correctional institution is terminated, both of the following apply:

(i) The operation and management responsibilities of the state correctional institution shall be transferred to another contractor under the same terms and conditions as applied to the original contractor or to the department of rehabilitation and correction.

(ii) The department of rehabilitation and correction or the new contractor, whichever is applicable, may enter into an agreement with the terminated contractor to purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

(K) Any action asserting that section 9.06 of the Revised Code or section 753.10 of the act in which this amendment was adopted violates any provision of the Ohio constitution and any claim asserting that any action taken by the governor or the department of administrative services or the department of rehabilitation and correction pursuant to section 9.06 of the Revised Code or section 753.10 of the act in which this amendment was adopted violates any provision of the Ohio constitution or any provision of the Revised Code shall be brought in the court of common pleas of Franklin county. The court shall give any action filed pursuant to this division priority over all other civil cases pending on its docket and expeditiously make a determination on the claim. If an appeal is taken from any final order issued in a case brought pursuant to this division, the court of appeals shall give the case priority over all other civil cases pending on its docket and expeditiously make a determination on the appeal.

(L) As used in this section:

(1) "Public entity" means the department of rehabilitation and correction, or a county or municipal corporation or a combination of counties and municipal corporations, that has jurisdiction over a facility that is the subject of a contract entered into under this section.

(2) "Local public entity" means a county or municipal corporation, or a combination of counties and municipal corporations, that has jurisdiction

over a jail, workhouse, or other correctional facility used only for misdemeanants that is the subject of a contract entered into under this section.

(3) "Governing authority of a local public entity" means, for a county, the board of county commissioners; for a municipal corporation, the legislative authority; for a combination of counties and municipal corporations, all the boards of county commissioners and municipal legislative authorities that joined to create the facility.

(4) "Contractor" means a person or entity that enters into a contract under this section to operate and manage a jail, workhouse, or other correctional facility.

(5) "Facility" means ~~the~~ any of the following:

(a) The specific county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other type of correctional institution or facility used only for misdemeanants, or a that is the subject of a contract entered into under this section;

(b) Any state correctional institution; that is the subject of a contract entered into under this section, including any facility described in Section 753.10 of the act in which this amendment was adopted at any time prior to or after any sale to a contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land.

(6) "Person or entity" in the case of a contract for the private operation and management of a state correctional institution, includes an employee organization, as defined in section 4117.01 of the Revised Code, that represents employees at state correctional institutions.

Sec. 9.231. (A)(1) Subject to divisions (A)(2) and (3) of this section, a governmental entity shall not disburse money totaling twenty-five thousand dollars or more to any person for the provision of services for the primary benefit of individuals or the public and not for the primary benefit of a governmental entity or the employees of a governmental entity, unless the contracting authority of the governmental entity first enters into a written contract with the person that is signed by the person or by an officer or agent of the person authorized to legally bind the person and that embodies all of the requirements and conditions set forth in sections 9.23 to 9.236 of the Revised Code. If the disbursement of money occurs over the course of a governmental entity's fiscal year, rather than in a lump sum, the contracting authority of the governmental entity shall enter into the written contract with the person at the point during the governmental entity's fiscal year that at least seventy-five thousand dollars has been disbursed by the governmental entity to the person. Thereafter, the contracting authority of the

SECTION 753.10. (A) As used in this section, "contractor" and "facility" have the same meanings as in section 9.06 of the Revised Code, as amended by Sections 101.01 and 101.02 of this act.

(B)(1) The Director of Administrative Services and the Director of Rehabilitation and Correction are hereby authorized to award one or more contracts through requests for proposals for the operation and management by a contractor of one or more of the facilities described in divisions (C) to (G) of this section, pursuant to section 9.06 of the Revised Code, and for the transfer of the state's right, title, and interest in the real property on which the facility is situated and any surrounding land as described in those divisions.

(2) If the Director of Administrative Services and the Director of Rehabilitation and Correction award a contract of the type described in division (B)(1) of this section to a contractor regarding a facility described in division (C), (D), (E), (F), or (G) of this section, in addition to the requirements, statements, and authorizations that must be included in the contract pursuant to division (B) of section 9.06 of the Revised Code, the contract shall include all of the following regarding the facility that is the subject of the contract:

(a) An agreement for the sale to the contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land;

(b) A requirement that the contractor provide preferential hiring treatment to employees of the Department of Rehabilitation and Correction in order to retain staff displaced as a result of the transition of the operation and management of the facility and to meet the administrative, programmatic, maintenance, and security needs of the facility;

(c) Notwithstanding any provision of the Revised Code, authorization for the transfer to the contractor of any supplies, equipment, furnishings, fixtures, or other assets considered necessary by the Director of Rehabilitation and Correction and the Director of Administrative Services for the continued operation and management of the facility;

(d) A binding commitment that irrevocably grants to the state a right, upon the occurrence of any triggering event described in division (B)(2)(d)(i) or (ii) of this section and in accordance with the particular division, to repurchase the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both the facility and real property on which it is situated plus the surrounding land that is to be transferred under the contract. The triggering

events and the procedures for a repurchase under the irrevocable grant described in this division are as follows:

(i) Before the contractor, or the contractor's successor in title, may resell or otherwise transfer the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both the facility and real property on which it is situated plus the surrounding land that is to be transferred under the contract, the contractor or successor first must offer the state the opportunity to repurchase the facility, real property, and surrounding land that is to be resold or transferred for a price not greater than the purchase price paid to the state for that facility, real property, or surrounding land, less depreciation from the time of the conveyance of that facility, real property, or surrounding land to the contractor, plus the depreciated value of any capital improvements to that facility, real property, or surrounding land that were made to it and funded by anyone other than the state subsequent to the conveyance to the contractor. The repurchase opportunity described in this division must be offered to the state at least one hundred twenty days before the contractor intends to resell or otherwise transfer the facility, real property, or surrounding land that is to be resold or transferred. After being offered the repurchase opportunity, the state has the right to repurchase the facility, real property, and surrounding land that is to be resold or otherwise transferred for the price described in this division.

(ii) Upon the contractor's default of any financial agreement for the purchase of the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both the facility and real property on which it is situated plus the surrounding land that is to be transferred under the contract, upon the contractor's default of any other term in the contract, or upon the contractor's financial insolvency or inability to meet its contractual obligations, the state has the right to repurchase the facility and real property, the surrounding land, or both the facility and real property and the surrounding land, for a price not greater than the purchase price paid to the state for that facility, real property, or surrounding land, less depreciation from the time of the conveyance of that facility, real property, or surrounding land to the contractor, plus the depreciated value of any capital improvements to that facility, real property, or surrounding land that were made to it and funded by anyone other than the state subsequent to the conveyance to the contractor.

(e) A requirement that if the operation and management portion of the contract is terminated the contractor's operation and management responsibilities be transferred to another contractor under the same terms and conditions and applied to the original contractor or to the Department of

Rehabilitation and Correction and authorization for the Department or new contractor, whichever is applicable, to enter into an agreement with the terminated contractor to purchase the terminated contractor's equipment, supplies, furnishings, and consumables.

(3)(a) If the Director of Administrative Services and the Director of Rehabilitation and Correction award a contract of the type described in division (B)(1) of this section to a contractor regarding a facility described in division (C), (D), (E), (F), or (G) of this section, notwithstanding any provision of the Revised Code and subject to division (B)(3)(b) of this section, the state may transfer to the contractor in accordance with the contract any supplies, equipment, furnishings, fixtures, or other assets considered necessary by the Director of Rehabilitation and Correction and the Director of Administrative Services for the continued operation and management of the facility. For purposes of this paragraph and the transfer authorized under this paragraph, any such supplies, equipment, furnishings, fixtures, or other assets shall not be considered supplies, excess supplies, or surplus supplies as defined in section 125.12 of the Revised Code and may be disposed of as part of the transfer of the facility to the contractor.

(b) If the Director of Administrative Services and the Director of Rehabilitation and Correction award a contract of the type described in division (B)(1) of this section to a contractor regarding the facility described in division (D) of this section, the Director of Rehabilitation and Correction may transfer to another state correctional institution to be determined by the Director of Rehabilitation and Correction the Braille printing press and related accessories located at the facility described in division (D) of this section and all programs associated with the Braille printing press.

(4) Nothing in divisions (B)(1) to (3) or divisions (C) to (G) of this section restricts the department of rehabilitation and correction from contracting for only the private operation and management of any of the facilities described in divisions (C) to (G) of this section.

(C)(1) As used in division (C) of this section, "grantee" means an entity that has contracted under section 9.06 of the Revised Code to privately operate the Lake Erie Correctional Facility, if the contract includes the clauses described in division (B)(2) of this section for the purchase of that Facility.

(2) The Governor is authorized to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the Lake Erie Correctional Facility, in the City of Conneaut, County of Ashtabula, State of Ohio, the land situated thereon, and any surrounding land, which totals approximately 119 acres.

In preparing the deed, the Auditor of State, with the assistance of the Attorney General, shall develop a legal description of the property in conformity with the actual bounds of the real estate.

(3) Consideration for conveyance of the real estate shall be set forth in the contract awarded to the grantee and shall be paid in accordance with the terms of the contract.

(4)(a) The deed may contain any restriction that the Director of Administrative Services and the Director of Rehabilitation and Correction determine is reasonably necessary to protect the state's interest in neighboring state-owned land.

(b) The deed also shall contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility thereon, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land.

(5) The real estate shall be sold as an entire tract and not in parcels.

(6) Upon payment of the purchase price as set forth in the contract awarded to the grantee, the Auditor of State, with the assistance of the Attorney General, shall prepare a deed to the real estate. The deed shall state the consideration and restrictions and shall be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee shall present the deed for recording in the Office of the Ashtabula County Recorder.

(7) The grantee shall pay all costs associated with the purchase and conveyance of the real estate, including recordation costs of the deed.

(8) The proceeds of the conveyance of the real estate shall be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund and shall be used to redeem or defease bonds in accordance with section 5120.092 of the Revised Code, and any remaining moneys after such redemption or defeasance shall be transferred in accordance with that section to the General Revenue Fund.

(9) Division (C) of this section does not restrict the Department of Rehabilitation and Correction from contracting, not for the sale of, but only for the private operation and management of the Lake Erie Correctional Facility.

(10) Division (C) of this section expires two years after its effective date.

(D)(1) As used in division (D) of this section, "grantee" means an entity that has contracted under section 9.06 of the Revised Code to privately

operate the Grafton Correctional Institution, if the contract includes the clauses described in division (B)(2) of this section for the purchase of that Institution.

(2) The Governor is authorized to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the Grafton Correctional Institution, in the City of Grafton, County of Lorain, State of Ohio, the land situated thereon, and any surrounding land, which totals approximately 148 acres.

In preparing the deed, the Auditor of State, with the assistance of the Attorney General, shall develop a legal description of the property in conformity with the actual bounds of the real estate.

(3) Consideration for conveyance of the real estate shall be set forth in the contract awarded to the grantee and shall be paid in accordance with the terms of the contract.

(4)(a) The deed may contain any restriction that the Director of Administrative Services and the Director of Rehabilitation and Correction determine is reasonably necessary to protect the state's interest in neighboring state-owned land.

(b) The deed also shall contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility thereon, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land.

(5) The real estate shall be sold as an entire tract and not in parcels.

(6) Upon payment of the purchase price as set forth in the contract awarded to the grantee, the Auditor of State, with the assistance of the Attorney General, shall prepare a deed to the real estate. The deed shall state the consideration and restrictions and shall be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee shall present the deed for recording in the Office of the Lorain County Recorder.

(7) The grantee shall pay all costs associated with the purchase and conveyance of the real estate, including recordation costs of the deed.

(8) The proceeds of the conveyance of the real estate shall be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund and shall be used to redeem or defease bonds in accordance with section 5120.092 of the Revised Code, and any remaining moneys after such redemption or defeasance shall be transferred in accordance with that section to the General Revenue Fund.

(9) Division (D) of this section does not restrict the Department of Rehabilitation and Correction from contracting, not for the sale of, but only for the private operation and management of the Grafton Correctional Institution.

(10) Division (D) of this section expires two years after its effective date.

(E)(1) As used in division (E) of this section, "grantee" means an entity that has contracted under section 9.06 of the Revised Code to privately operate the North Coast Correctional Treatment Facility, if the contract includes the clauses described in division (B)(2) of this section for the purchase of that Facility.

(2) The Governor is authorized to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the North Coast Correctional Treatment Facility, in the City of Grafton, County of Lorain, State of Ohio, the land situated thereon, and any surrounding land, which totals approximately 171 acres.

In preparing the deed, the Auditor of State, with the assistance of the Attorney General, shall develop a legal description of the property in conformity with the actual bounds of the real estate.

(3) Consideration for conveyance of the real estate shall be set forth in the contract awarded to the grantee and shall be paid in accordance with the terms of the contract.

(4)(a) The deed may contain any restriction that the Director of Administrative Services and the Director of Rehabilitation and Correction determine is reasonably necessary to protect the state's interest in neighboring state-owned land.

(b) The deed also shall contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility thereon, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land.

(5) The real estate shall be sold as an entire tract and not in parcels.

(6) Upon payment of the purchase price as set forth in the contract awarded to the grantee, the Auditor of State, with the assistance of the Attorney General, shall prepare a deed to the real estate. The deed shall state the consideration and restrictions and shall be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee shall present the

deed for recording in the Office of the Lorain County Recorder.

(7) The grantee shall pay all costs associated with the purchase and conveyance of the real estate, including recordation costs of the deed.

(8) The proceeds of the conveyance of the real estate shall be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund and shall be used to redeem or defease bonds in accordance with section 5120.092 of the Revised Code, and any remaining moneys after such redemption or defeasance shall be transferred in accordance with that section to the General Revenue Fund.

(9) Division (E) of this section does not restrict the Department of Rehabilitation and Correction from contracting, not for the sale of, but only for the private operation and management of the North Coast Correctional Treatment Facility.

(10) Division (E) of this section expires two years after its effective date.

(F)(1) As used in division (F) of this section, "grantee" means an entity that has contracted under section 9.06 of the Revised Code to privately operate the North Central Correctional Institution, if the contract includes the clauses described in division (B)(2) of this section for the purchase of that Institution.

(2) The Governor is authorized to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the North Central Correctional Institution, in the City of Marion, County of Marion, State of Ohio, the land situated thereon, and any surrounding land, which totals approximately 152 acres.

In preparing the deed, the Auditor of State, with the assistance of the Attorney General, shall develop a legal description of the property in conformity with the actual bounds of the real estate.

(3) Consideration for conveyance of the real estate shall be set forth in the contract awarded to the grantee and shall be paid in accordance with the terms of the contract.

(4)(a) The deed may contain any restriction that the Director of Administrative Services and the Director of Rehabilitation and Correction determine is reasonably necessary to protect the state's interest in neighboring state-owned land.

(b) The deed also shall contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility thereon, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land.

(5) The real estate shall be sold as an entire tract and not in parcels.

(6) Upon payment of the purchase price as set forth in the contract awarded to the grantee, the Auditor of State, with the assistance of the Attorney General, shall prepare a deed to the real estate. The deed shall state the consideration and restrictions and shall be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee shall present the deed for recording in the Office of the Marion County Recorder.

(7) The grantee shall pay all costs associated with the purchase and conveyance of the real estate, including recordation costs of the deed.

(8) The proceeds of the conveyance of the real estate shall be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund and shall be used to redeem or defease bonds in accordance with section 5120.092 of the Revised Code, and any remaining moneys after such redemption or defeasance shall be transferred in accordance with that section to the General Revenue Fund.

(9) Division (F) of this section does not restrict the Department of Rehabilitation and Correction from contracting, not for the sale of, but only for the private operation and management of the North Central Correctional Institution.

(10) Division (F) of this section expires two years after its effective date.

(G)(1)(a) As used in division (G) of this section, "grantee" means an entity that has contracted under section 9.06 of the Revised Code to privately operate a facility at the North Central Correctional Institution Camp, if the contract includes the clauses described in division (B)(2) of this section for the purchase of that facility.

(b) Jurisdiction of the facility described in division (G)(1)(a) of this section, which is a vacated facility previously operated by the Department of Youth Services adjacent to the North Central Correctional Institution, is hereby transferred from the Department of Youth Services to the Department of Rehabilitation and Correction. The transfer of jurisdiction of that facility is hereby ratified and approved.

(2) The Governor is authorized to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the North Central Correctional Institution Camp, in the City of Marion, County of Marion, State of Ohio, the land situated thereon, and any surrounding land, which totals approximately 106 acres.

In preparing the deed, the Auditor of State, with the assistance of the Attorney General, shall develop a legal description of the property in conformity with the actual bounds of the real estate.

(3) Consideration for conveyance of the real estate shall be set forth in the contract awarded to the grantee and shall be paid in accordance with the terms of the contract.

(4)(a) The deed may contain any restriction that the Director of Administrative Services and the Director of Rehabilitation and Correction determine is reasonably necessary to protect the state's interest in neighboring state-owned land.

(b) The deed also shall contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility thereon, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land.

(5) The real estate shall be sold as an entire tract and not in parcels.

(6) Upon payment of the purchase price as set forth in the contract awarded to the grantee, the Auditor of State, with the assistance of the Attorney General, shall prepare a deed to the real estate. The deed shall state the consideration and restrictions and shall be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee shall present the deed for recording in the Office of the Marion County Recorder.

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(9) Division (G) of this section does not restrict the Department of Rehabilitation and Correction from contracting, not for the sale of, but only for the private operation and management of the North Central Correctional Institution Camp.

(10) Division (G) of this section expires two years after its effective date.

SECTION 753.20. (A) The Governor is authorized to execute a deed in