

ORIGINAL

In the  
**Supreme Court of Ohio**

STATE OF OHIO EX REL.	)	Supreme Court of Ohio
GLEN P. STEWART, et al.,	)	Case No. 2014-1792
	)	
Relators,	)	Original Action in Mandamus
	)	
vs.	)	
	)	
THE OHIO LOCAL GOVERNMENT	)	
INNOVATION COUNCIL, et al.	)	
	)	
Respondents.	)	

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**RELATORS' REQUEST FOR REFERRAL OF THIS  
MATTER TO THE MASTER COMMISSIONER AND REQUEST FOR  
ORAL ARGUMENT**

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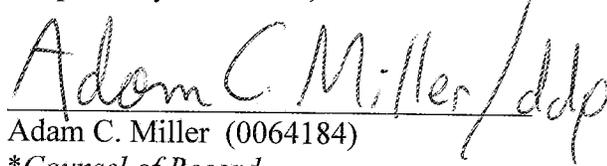
*Counsel for Respondents*

Pursuant to S.Ct.Prac.R. 12.10, Relators respectfully request that the Court refer this action to the Master Commissioner for the presentation of evidence, hearings, and oral arguments. Based on the Relators' Complaint in Mandamus and the Respondents' Motion to Dismiss, Relators are entitled to issuance of the peremptory writ pursuant to S.Ct.Prac.R. 12(C).

FILED  
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 SUPREME COURT OF OHIO

and this matter is ripe for adjudication. A memorandum in support of this request is attached below.

Respectfully Submitted,

Handwritten signature of Adam C. Miller in cursive, with the initials 'ddp' written at the end of the signature.

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## MEMORANDUM IN SUPPORT

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Pursuant to S.Ct.Prac.R. 12.10, Relators respectfully request that the Court refer this action to the Master Commissioner for the presentation of evidence, hearings, and oral arguments. Relators' Complaint was filed on October 16, 2014. In their Complaint, Relators requested expedited treatment in this action. On December 17, 2014, Respondents filed their motion to dismiss.<sup>1</sup> S.Ct.Prac.R. 12.04(C) provides that "[a]fter the time for filing an answer to the complaint or a motion to dismiss, the Supreme Court will either dismiss the case or issue an alternative or preemptory writ, if a writ has not already been issued." Based on Relators'

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<sup>1</sup> Respondents' 12(B)(1) motion hinges entirely on a theory of ripeness. Respondents cite to *State ex rel. Elyria Foundry Co. v. Indus. Comm.*, 82 Ohio St. 3d 88, 694 N.E.2d 459 (1998), a workers' compensation case, to support their argument. *Elyria Foundry*, however, is distinguishable from the facts of this case.

Complaint and Respondents' Motion to Dismiss, Relators maintain that they are entitled to issuance of a peremptory writ, and request that this matter be referred to the Master Commissioner.

These critical facts remain undisputed: (1) the Local Government Innovation Council ("LGIC") unanimously voted to approve the Local Government Innovation Program ("LGIP") planning grant funds and (2) the Ohio State Controlling Board unanimously voted to affirm the LGIC's action, and Director's recommendation, while also approving disbursement of the grant funds. Respondents admit that the LGIC still has not taken any official action to "reconsider" or change the approval of the grant application. Motion to Dismiss at 5. It has been over ten (10) months since the LGIC voted to approve the grant application and over eight (8) months since the State Controlling Board approved disbursement of the funds, but Relators remain empty-handed – they have not received any grant funds and they have not received the LGIP planning grant services agreement. Motion to Dismiss at 3. Without immediate action by this Court, Relators' have no legal recourse for Respondents' ongoing refusal to comply with their statutory obligations.

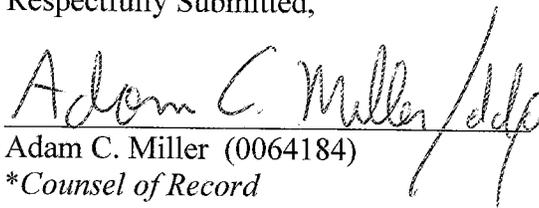
Relators request that oral arguments be held in this case. When oral argument is discretionary, the Court will consider whether the case "involves a matter of great public importance, complex issues of law or fact, a substantial constitutional issue, or a conflict among courts of appeals." *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3rd 421, 2012-Ohio-5697, 983 N.E.2d 309 ¶ 10. This case is matter is great public importance because it involves Respondents' unlawful interference with the implementation of the LGIP and the issuance of Local Government Innovation Funds. As the Respondents state in their motion to dismiss, "the goal of both the Program and the Fund are to provide financial assistance to local entities in

order to promote more efficient and effective delivery of government services.” Motion to Dismiss at 3. The purpose of Relators’ specific grant fund application was to pursue a consolidated 9-1-1 emergency system, which would help protect the lives and property of citizens in a number of communities.

This case involves complex issues of law because it addresses the authority of the LGIC to “reconsider” its prior approval of a grant application, and whether a purported “mistake of fact” relieves the Respondents of their statutory obligations. Further, a key question of law is whether Ohio Development Services Agency (“Agency”) employees have individual authority to thwart an official Ohio State Controlling Board action to disburse grant funds by refusing to issue a grant services agreement. It is undisputed that the Agency Director, Mr. David Goodman, and the Controlling Board have both officially acted to compel the Agency to disburse Phase I LGIP funds. The facts show that a second-tier staff member is unilaterally acting to postpone disbursement of funds and the LGIP grant contract despite the Agency Director’s decision and Controlling Board’s official action. Such actions are unprecedented, unlawful, and should be immediately addressed by this Court.

For the forgoing reasons, Relators respectfully request that the Court refer this action to the Master Commissioner for the presentation of evidence, hearings, and oral arguments.

Respectfully Submitted,



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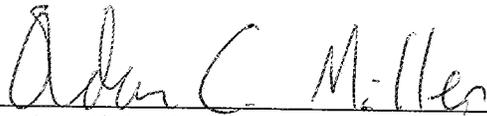
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **RELATORS' REQUEST FOR REFERRAL OF THIS MATTER TO THE MASTER COMMISSIONER AND REQUEST FOR ORAL ARGUMENT**, was served via email on this 31st day of December, 2014 on Matthew T. Green, Assistant Attorney General, Counsel for all Respondents, at 30 East Broad St., 26<sup>th</sup> Floor, Columbus, Ohio 43215, email address [matthew.green@ohioattorneygeneral.gov](mailto:matthew.green@ohioattorneygeneral.gov).

  
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