ORIGINAL

In the
Supreme Court of Ohio

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

FILED
FEB 26 2015
CLERK OF COURT
SUPREME COURT OF OHIO

RELATORS' MOTION FOR THE ISSUANCE OF A PEREMPTORY WRIT OF MANDAMUS AND FOR AN EMERGENCY ORDER PROHIBITING THE OHIO DEVELOPMENT SERVICES AGENCY AND THE LOCAL GOVERNMENT INNOVATION COUNCIL FROM TAKING ANY ACTON THAT WOULD RESULT IN THE RESCISSION OF RELATORS' PREVIOUSLY APPROVED $45,000 PUBLIC SAFETY EMERGENCY RESPONSE JOINT DISPATCH GRANT

Pursuant to S.Ct. Prac. Rules. 4.01(A)(1) and 12.04 (C), Relators respectfully request that the Court issue a peremptory writ of mandamus in this case and issue an Order which prohibits the Local Government Innovation Council and the Ohio Development Services Agency (the "Agency") from taking any action to rescind Relators' previously approved $45,000 public safety emergency joint dispatch services grant. Relators file this motion because Respondents have failed to provide any legal justification whatsoever for their refusal to issue a grant services agreement and flow funds in accordance with the April 2014 unanimous State Controlling Board vote and order to do so. As previously represented in their December 17, 2014 Motion and confirmed yesterday by the chief legal counsel for the Agency; despite the pendency of this action with the Court, the Local Government Innovation Council ("LGIC") intends to

"reconsider" its prior approval of the Relators' $45,000 joint dispatch emergency dispatch grant on February 26, 2015. As of 1:30 pm February 25, 2015, Ohio Development Services Agency ("Development") Chief Counsel Jon Stock indicated that despite Relators' formal written objection and repeated requests through counsel to suspend any action concerning Relators' $45,000 LGIF Grant Award *pendente lite*; the LGIC still intends to reconsider and rescind its approval of the 45,000 grant at the February 26, 2015 meeting. Such a rescission by the LGIC will irreparably harm Relators' interest and ignore the Relators' legal right to issuance of the peremptory writ directing release of Relators' LGIP significant grant funds. The LGIC and Agency counsel are fully aware that the instant matter and several related Motions are pending with this Court. The LGIC's legal authority (or lack thereof) to "reconsider" and rescind its prior approval of the Relators' grant application is the central issue in dispute in this case. In the context of a peremptory writ, equity demands that this Court act to the extent necessary to prevent the LGIC and the Agency from willfully, wrongfully, and irreparably harming Relators' interest while their claims are pending disposition in this Court. In view of the pending instant litigation, Respondent's should be seeking permission from this Court to rescind Relators' $45,000 grant and the Controlling Board's award. Instead, Respondents believe that merely giving notice of their intention to act somehow cloaks the rescission action with validity. Therefore, in the interests of justice it is critical that the Court take appropriate action to prevent the LGIC's "reconsideration" and rescission of the Relators' grant prior to a decision on the merits. A Memorandum in support of the Motion is attached.

Respectfully Submitted,

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MEMORANDUM IN SUPPORT

The procedural posture of this case requires that the Court shall issue a writ of mandamus pursuant to S. Ct. Prac. R. 12.04(C). Rule 12.04(C) provides: "After the time for filing an answer to the complaint or a motion to dismiss, the Supreme Court will either dismiss the case or issue and alternative writ or a peremptory writ, if a writ has not already been issued." (The Supreme Court of Ohio, 2015 Rules of Practice.) The Local Government Innovation Council ("LGIC") granted the Relators' Local Government Innovation Program ("LGIP") grant application and awarded the Relators up to $45,000 in LGIP grant funds on February 27, 2014- almost one year ago. In April 2014, the State Controlling Board unanimously approved Relators' $45,000 grant and directed the agency to flow funds thereto. Relators filed their complaint for a writ of mandamus on October 16, 2014 – over four months ago. To this day, the Relators have not received one penny of LGIP of grant funds, and the Respondents continue to wrongfully and unlawfully withhold the grant agreement from the Relators. The LGIC has

indicated that it plans to "reconsider" and rescind its prior approval of the Relators' LGIP grant money for joint emergency dispatch services. On December 17, 2014, the Respondents filed their Motion to Dismiss, which stated that the LGIC intends to reconsider the Relators' grant application at the February 26, 2015 meeting. (Motion to Dismiss at 7.) Daryl Hennessy, Chief of the Business Services Division for Development, submitted an affidavit in support of the Motion to Dismiss that stated that the LGIC will reconsider the Relators' application at the February 26, 2015 meeting. (Motion to Dismiss, Exhibit 1.) Yesterday, Development's Chief Legal Counsel reiterated the LGIC's intention to act regardless of the Court's pending consideration of the merits in this action.

Without immediate action from the Court, the LGIC's attempt at rescission by political means, will effectively circumvent Relators' right to the issuance of a peremptory writ in mandamus (which is the central purpose of this proceeding) by unlawfully and wrongfully subverting its long standing approval of Relators' grant application. Equity and law require that this Court prevent Respondents' end run around this Court's consideration of LGIC's legal authority to reconsider its approval of the Relators grant. **Whether the LGIC can take such action is the crux of Relators' mandamus complaint.**

Relators take no joy in filing this motion. But the Respondents have left the Relators with no other option. Only the issuance of a peremptory writ of mandamus along with the commensurate Order from this Court prohibiting the LGIC and the agency from taking any action that would result in the rescission of the previously approved $45,000 grant will ensure that the Respondents do not proceed with their stated intent of "reconsidering" and rescinding Relators' grant funds – critically necessary to maintain timely and effective emergency response consolidated joint dispatch services.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via email on February 26, 2015 on Matthew T. Green, Assistant Attorney General, Counsel for all Respondents, at 30 East Broad St., 26th Floor, Columbus, Ohio 43215, email address matthew.green@ohioattorneygeneral.gov.

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