IN THE SUPREME COURT OF OHIO

PROGRESS OHIO, *et al.*,	)	Case No. 2012-1272
Plaintiffs-Appellants,	)	ON APPEAL from the Court of Appeals for the Tenth Appellate District of Ohio
-VS-	)	
JOBSOHIO, *et al.*,	)	Ct. of App. No. 11-AP-1136
Defendants-Appellees.	)	

BRIEF OF *AMICUS CURIAE* 1851 CENTER FOR CONSTITUTIONAL LAW IN SUPPORT OF MEMORANDUM FOR JURISDICTION OF APPELLANTS PROGRESS OHIO, *et al.*

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INTEREST OF *AMICUS CURIAE*

Formed to advance Ohioans' constitutional liberties, individual rights, and prosperity through limiting state and local government to its constitutional confines, the 1851 Center for Constitutional Law is dedicated to protecting Ohioans' control over their lives, their families, their property, and thus, ultimately, their destinies. In doing so, the 1851 Center has developed particular expertise in Ohio constitutional law, has authored numerous publications on this topic, and has achieved favorable results for Ohioans in numerous cases.

More pointedly, the 1851 Center is committed to enforcing the critical constitutional debt and corporate welfare limitations on state government articulated in Article VIII and XIII. Active enforcement of these limitations on unequal and preferential treatment of competing business interests, intervention in private business, and use of government as a tool for private business to achieve its self-interest, are essential to good government in Ohio and consistent with the 1851 Center's mission. However, if no Ohioan has standing to enforce these provisions when they are transgressed, their words mean nothing, and there is no redress for the violation of the Ohio Constitution -- social contract between Ohioans and their government.

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Standing is the most critical of constitutional issues because it is the vehicle that provides Ohioans with access to all other rights. Without standing to enforce constitutional limits on government, those limits become meaningless, the legislature becomes all-powerful, and the judiciary becomes irrelevant.

Taxpayer standing and "public right," or "public interest," standing are on parallel tracks, and jurisprudence on each is in need of this Court's guidance and clarification.[1] Despite their criticality, Ohio courts have, over the past decade, muddled standing jurisprudence to the point that this Court may no longer remain on the sidelines. Replete with confusion, inconsistencies, and obliviousness of the Ohio Constitution, many of these courts have attempted, ironically in the name of "restraint" to impose extra-constitutional hurdles on Ohioans vindication of their right to a government that abides by the Ohio Constitution.

The most pernicious features of these courts' decision are (1) ignoring the Ohio Constitution and applying federal standing precedent, which unlike in Ohio, is dependent on the limiting Article III "cases and controversies" requirement; and (2) requiring that an Ohioan have a "personal stake", "special interest", or "unique injury" to enforce structural limitations on government spending and indebtedness, even though the violations of these limitations injure all Ohioans in their right to a government that follows the constitution, but injures none of them in a way that affords standing under these judicially-imaged rubrics; and (3) subjectively picking and choosing which constitutional limits are of a sufficiently important public interest for exemption from the personal stake requirement.

A genuine split of authority now exists among Ohio's appellate courts. In recent years, Courts of Appeals for the Twelfth and Tenth Districts have aggressively attempted to pound the square peg of judicially-concocted standing rules into the round hole of Ohio Constitution's general limits on spending, indebtedness, and corporate welfare.

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[1] While Appellants here principally articulate a case for public right standing, public right standing necessarily overlaps with taxpayer standing, as the Ohioan seeking to enforce a public right will usually be a taxpayer, and in tax, spending, and indebtedness limitation cases, the Ohioan will be impaired both as a citizen and as a taxpayer. Consequently, *Amici* uses taxpayer and public right standing in aggregate and interchangeably throughout this brief, and believes the Court should recognize the overlap as well.

The poorly-reasoned but little-questioned case of *Brinkman v. Miami University*[2] has become the rule of road in these districts. In *Brinkman*, the Twelfth District concluded, relying solely upon a law review article, *federal* cases, and a dissenting opinion of an Ohio Supreme Court justice, "[a]lthough the issue perhaps is not without some doubt, we are unconvinced that Ohio law permits a taxpayer who contributes to the state's general-revenue fund to challenge any and all general revenue expenditure."[3]

Meanwhile, constitutional spending limits have *not* been suspended through judicial artifice in Courts of Appeals for the First and Fourth Districts. In *Washington Cty. Taxpayers Assn. v. Peppel*, the Courts of Appeals for the Fourth District held "Ohio law has long held that a taxpayer generally has the right to contest the creation of an illegal public debt which the taxpayer, in common with other property holders of the taxing district, may otherwise be compelled to pay."[4] Likewise, in an Article VIII case adjudicating state spending, *Fankhauser v. Rhodes*,[5] the Court of Appeals for the First District, while acknowledging the *pro forma* assertion that "[i]n order to have standing to challenge a proposed state activity involving expenditure from a special fund, a taxpayer must have some interest in that special fund,"[6] ruled "[h]owever, <u>if the proposed activity involves expenditure from general revenues, any taxpayer will have standing to challenge that activity</u>."[7] In support of this conclusion, the Court explained "[i]f the State commits itself to an obligation on general funds in excess of that constitutionally permitted, taxpayers are threatened with being required to pay taxes to

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2 *Brinkman v. Miami Univ*., 12th Dist. No. CA2006-12-313, 2007-Ohio-4372,

3 Id., citing Michael E. Solimine, Recalibrating Justiciability in Ohio Courts (2004), 51 Clev.St.L.Rev. 531, 536 ("Many Ohio cases, both in the supreme court and the lower federal courts, have routinely followed standing doctrines developed in federal courts. Thus, Ohio courts have held that litigants must have 'standing,' described in ways very similar to federal court jurisprudence[.]");

4 78 Ohio App.3d 146, 604 N.E.2d 181 (1992), citing 88 Ohio Jurisprudence 3d (1989) 69, Taxpayers Action, Section 55.

5 March 5, 1980, Clermont Co. Case Nos. 810, 878, unreported.

6 Id., citing *State ex rel. Lynch v. Rhodes* (1964), 176 Ohio St. 251, 199 N.E.2d 393.

7 Id., citing *Green v. State Civil Service Commission* (1914), 90 Ohio St. 252, 107 N.E. 531; *Mayer v. Ames* (1938), 133 Ohio St. 458, 14 N.E.2d 617.

satisfy that obligation. Any taxpayer, then, ought to have standing to see that the government abides by this constitutional limitation, since any taxpayer has a pecuniary interest jeopardized by these governmental acts."[8]

These starkly contrasting views of citizens' rights to require their government to abide by constitutional spending and debt limitations have not been reconciled. This case presents the opportunity for this Court to provide needed superintendence over standing jurisprudence in Ohio - - with respect to both public right and taxpayer standing, and to vindicate Ohioans access to judicial redress, when the legislative branch fails them.

And this Court seems to recognize the need to clarify standing rules in Ohio. Likely in recognition of this confusion, in September of 2010, this Court recently accepted jurisdiction over the issue of whether school district taxpayers maintain standing to challenge expenditure of funds for an unlawful purpose.[9] That case was found improvidently granted, and this Court has seldom-before or since had the opportunity to consider the extent of taxpayer and/or public interest standing.

Finally, this case involves a substantial constitutional question and is of great public importance because if the Court of Appeals' views of public right standing and the requisite "personal stake" required to raise an action before Ohio courts prevails, a number of critical provisions will be effectively redacted from the Ohio Constitution. This includes all of Articles VIII and XIII, at issue in this case, but also includes the following important constraints on the legislature- - all responses to the events that gave rise to the 1850-51 Ohio Constitutional Convention:

- Section 2, Article I: "* * * [N]o special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly."

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[8] Id.

[9] See September 29, 2010 Order, accepting review of Proposition of Law No. 1 in 2010-Ohio-0943 , available at http://www.sconet.state.oh.us/tempx/184946.pdf

- Section 15(D), Article II: "No bill shall contain more than one subject, which shall be clearly expressed in its title."

- Section 26, Article II: "All laws, of a general nature, shall have uniform operation throughout the state."

- Section 4, Article VIII: "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 * * *."

The Ohio Constitution must be presumed and construed to be enforceable. And this Court must accept jurisdiction over this matter to make it so.

STATEMENT OF THE CASE AND FACTS

Amici respectfully direct this Court to the Appellants' recitation of the case and facts, with only the following caveats: it should be emphasized that Appellants are in fact Ohio taxpayers; and further, an association of individual opposed to corporate welfare.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

<u>Proposition of Law No. I:</u> The Ohio Constitution demands that citizens and taxpayers possess standing to enforce limits on tax, spending, and indebtedness legislation.

The decision of the Court of Appeals in this case cannot be permitted to stand. That decision relies solely on federal standing limitations for the nonsequitor that Ohioans have no standing - - and effectively no method at all - - of enforcing constitution limits on state spending power. In doing so, it ignores (1) the independent significance of the Ohio Constitution (including its absence of limitations akin to Article III standing requirements in the federal constitution); (2) the fact that the provisions in dispute here are, as the responses to the very issues that precipitated the constitutional convention of 1851, of critical public interest; (3) the inapplicability of the "personal stake" requirement when citizens seek to enjoin unlawful expenditures of public funds; and (4) the abject

absence of an intellectual justification for its contribution to the slow erosion of Ohioans' right to enforce the Ohio Constitution in Ohio courts.

A. The Appellate Court's reliance on the federal constitution to nullify Ohioans' state constitutional rights is misplaced.

Application of explicit demarcations in Article III of the federal constitution to this state-based constitutional dispute cannot be justified. The Court of Appeals' Decision quite clearly insults the dignity of the Ohio Constitution and denies Ohioans the fullest protect of their rights. In a lengthy block quote citing one of its own 2012 rulings, the Court cites federal precedent alone, or state precedent simply borrowing from federal precedent for the propositions that (1) "a litigant must have a personal stake in the matter he or she wishes to litigate;" (2) the injury must be "palpable" and "to the plaintiff himself or to a class;" and (3) "an injury which is borne by the population in general, and which does not affect the plaintiff in particular, is not sufficient to confer standing."[10]

The United States Supreme Court has repeatedly reminded state courts that they are free to construe their state constitutions so as to provide different, and broader, protections of individual liberties than those offered by the federal Constitution.[11] "The decisions of the [United States Supreme] Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of *state* law. Accordingly, such decisions are not mechanically applicable to state law issues, and state court judges and the members of the bar seriously err if they so treat

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[10] *ProgressOhio.org, Inc. v. JobsOhio*, 2012-Ohio-2655, pp. 4-5.

[11] *Arnold v. Cleveland*, (1993), 67 Ohio St.3d 35, 616 N.E.2d 163, citing, *e.g., City of Mesquite v. Aladdin's Castle, Inc.* (1982), 455 U.S. 283, 293, 102 S.Ct. 1070, 1077, 71 L.Ed.2d 152, 162 (" * * * [A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution, or to reject the mode of analysis used by this Court in favor of a different analysis of its corresponding constitutional guarantee."); and *California v. Greenwood* (1988), 486 U.S. 35, 43, 108 S.Ct. 1625, 1630, 100 L.Ed.2d 30, 39 ("Individual States may surely construe their own constitutions as imposing more stringent constraints on police conduct than does the Federal Constitution."). See, also, *Pruneyard Shopping Ctr. v. Robins* (1980), 447 U.S. 74, 81, 100 S.Ct. 2035, 2040, 64 L.Ed.2d 741, 752.

them."[12] In fact, "[w]hen a state court interprets the constitution of its state merely as a restatement of the Federal Constitution, it both insults the dignity of the state charter and denies citizens the fullest protection of their rights."[13]

Accordingly, the Ohio Supreme Court long ago acknowledged "we believe that the Ohio Constitution is a document of independent force."[14] And more recently, the Court has reaffirmed this: "[w]e are, of course, free to determine that the Ohio Constitution confers greater rights on its citizens than those provided by the federal Constitution, and we have not hesitated to do so in cases warranting an expansion,"[15] and "state constitutions are a vital and independent source of law."[16]

In 1802, 1851, and 1912, the framers of the Ohio Constitution were no doubt aware of the federal constitution's Article III "cases and controversies" requirements. Yet the Ohio Constitution contains no analogous provision. Instead, Article IV governs judicial authority, and simply provides "the judicial power of the state is vested in a supreme court. . ." and "the several judges of the Supreme Court . . . shall, respectively, have and exercise such power and jurisdiction . . . as may be directed at law."[17] Consequently, the Ohio Constitution places no prohibitions on Ohioans bringing nor Ohio courts hearing actions regarding the constitutionality of state spending and debt decisions. To the contrary, Section 16, Article I provides "all courts shall be open, and every person * * * shall have remedy by due course of law, and shall have justice administered without denial or delay * * *."

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[12] Brennan, State Constitutions and the Protection of Individual Rights (1977), 90 Harv.L.Rev. 489, 502. (emphasis added).

[13] *Arnold v. Cleveland*, (1993), 67 Ohio St.3d 35, 616 N.E.2d 163.

[14] *Arnold*, supra.

[15] *State v. Gardner* (2008) 118 Ohio St.3d 420, 889 N.E.2d 995, citing *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115 (holding that the Ohio Constitution's Takings Clause affords greater protection than the corresponding federal provision).

[16] *Gardner*, supra, citing generally William J. Brennan Jr., The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights (1986), 61 N.Y.U.L.Rev. 535.

[17] See Section 1, Article IV, Section 19, Article IV, respectively. As Justice John Marshall famously explained "The enumeration presupposes something unenumerated." And what is not enumerated here is a standing requirement.

Consequently, the exclusion of a jurisdictional standing bar must be viewed as deliberate, and the text of the Ohio Constitution must be read in a manner consistent with rendering its safeguards *actually enforceable*.

In *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, this Court acknowledged this critical distinction, explaining as follows:

> In the federal judicial system, where the requirement for injury is grounded in the constitutional requirements of Section 2, Article III of the United States Constitution, the necessity of showing injury in fact prevails irrespective of whether the complaining party seeks to enforce a private or public right. * * * However, the federal decisions in this area are not binding upon this court, and we are free to dispense with the requirement for injury where the public interest so demands. Unlike the federal courts, state courts are not bound by constitutional strictures on standing; with state courts standing is a self-imposed rule of restraint. State courts need not become enmeshed in the federal complexities and technicalities involving standing and are free to reject procedural frustrations in favor of just and expeditious determination on the ultimate merits.[18]

Here, for the reasons below, "the public interest so demands" that the injury requirement be dispensed with, and this Court must "reject procedural frustrations in favor of just and expeditions determination on the ultimate merits": Applying federal law here, with respect to spending and indebtedness limitations, renders legislative enactments invincible, the judiciary feckless, and key provisions of the Ohio Constitution a nullity. And when in doubt, this Court should presume that the Ohio Constitution was written to be enforced.

B. Enforcing well-defined constitutional limits on state spending, indebtedness, and government anointment of special corporate privilege is "of great importance and interest to the public."

First, it is untethered from any constitutional principle for an Appellate Court to normatively select which provisions of a state's constitution are sufficiently important to provide standing: each provision in the Ohio Constitution reflects the will of the people, and the contract between the people

[18] *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062; see also 59 American Jurisprudence 2d (1987) 415, Parties, Section 30.

and their government. This Court must instead recognize, as others have, that "it is always in the public interest to prevent the violation of a party's constitutional rights."[19] Accordingly, this Court need not inquire into its own subjective view of the importance of Ohio's spending, indebtedness, and special corporate privilege limitations.

But this is exactly what the Appellate Court did. And in defaming the importance of Articles VIII and XIII of the Ohio Constitution, as opposed to Article IV, the Appellate Court ignores the fact that Articles VIII and XIII reflect the policy solutions adopted by the people of Ohio to prevent the very problems that necessitated the 1850-51 Ohio Constitutional Convention.[20] Specifically, the Appellate Court asserted "appellants cannot find the kind of rare and extraordinary circumstances necessary to invoke public-interest standing, therefore, the public-right exception to the usual personal stake requirement for standing cannot be met * * * 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. This is not enough of a public concern to confer standing on appellants*."[21]

In *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, this Court unambiguously stated "this court has long taken the position that when the issues sought to be litigated are of great importance and interest to the public, they may be resolved in a form of action that involves no rights or obligations peculiar to named parties."[22] In *State ex rel. Newell v. Brown*, the Supreme Court held "[o]rdinarily a person is not authorized to attack the constitutionality of a statute, where his private rights have suffered no interference or impairment, but as a matter of public policy a citizen does have such an interest in his government as to give him capacity to maintain a proper action to enforce

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19 *See G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994)

20 And while lawyers and judges may self-servingly presume IV to be critical, may citizens may well give greater credence to Articles VIII and XIII.

21 *ProgressOhio.org, Inc. v. JobsOhio*, 2012-Ohio-2655, pp. 8-10. Emphasis added.

22 Id., at 471.

the performance of a public duty affecting himself and citizens generally."[23] The court explained that "[w]here a public right, as distinguished from a purely private right, is involved, a citizen need not show any special interest therein, but he may maintain a proper action predicated on his citizenship relation to such public right. This doctrine has been steadily adhered to by this court over the years."[24]

More recently, in *State ex rel. Cater v. N. Olmsted*, this Court held that a taxpayer has standing as such to enforce the public's right to proper execution of city charter removal provisions, regardless of any private or personal benefit.[25] Of important note, while the mandamus action in *Cater* was brought pursuant to R.C. 733.59, which specifically provides for judicial review, the Court stated "we have made clear that R.C. 733.56 through 733.61 merely codify the public-right doctrine as to municipal corporations, and that the doctrine exists independent of any statute authorizing invocation of the judicial process."[26] "Thus the public action is fully conceived in Ohio as a means to vindicate the general public interest."[27]

Here, there can be no dispute that enforcement of the structural government spending, indebtedness, and corporate privileges limitations in Articles VIII and XIII of the Ohio Constitution are of great importance to the public. The provisions Appellants seek to enforce in this case were enacted in 1851 in response to the very issues that gave rise to the 1850-51 Ohio Constitutional Convention.

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[23] *State ex rel. Newell v. Brown* (1954), 162 Ohio St. 147, 54 O.O. 392, 122 N.E.2d 105.

[24] *Id.* at 150-151, 54 O.O. at 393, 122 N.E.2d at 107.

[25] State ex rel. Cater v. N. Olmsted (1994), 69 Ohio St.3d 315, 322-323, 631 N.E.2d 1048, 1054-1055

[26] *State ex rel. Cater v. N. Olmsted* (1994), 69 Ohio St.3d 315, 322-323, 631 N.E.2d 1048, 1054-1055

[27] *Sheward*, supra., at 1084. (*State ex rel. Nimon v. Springdale* (1966), 6 Ohio St.2d 1, 4-5, 35 O.O.2d 1, 3, 215 N.E.2d 592, 595. ("In particular, the court in *Nimon* listed a long line of cases in support of the citizen/taxpayer-mandamus action, and explained that "no case cited in the footnote involves (1) a municipal corporation; (2) Section 733.59, Revised Code, or any statute similar thereto; or (3) an extrastatutory demand upon, and refusal of, a county prosecutor, the Attorney General or other public legal officer to institute the suit.")

That convention was precipitated by the average citizen's growing awareness of "the mad rush to rob the state treasury and heap up debts to be paid by generations yet unborn,"[28] and recognition that the legislature had become "the pliant tool of individual greed."[29] Much like today, this "mad rush" involved bailouts of and investments in private corporations. Thus, "raids on the public money by private interests," namely handouts to railroad and canal corporations, furnished the most important issue leading to the Constitutional Convention of 1850-51, and one of the Convention's main concerns was to stop "the wild debauch on the treasury" by private interests and prevent a recurrence by (among other measures) limiting special legislation.[30] To address these issues, the delegates to the 1850-1851 constitutional convention authored the key constitutional provisions in Article VIII, which they felt sufficient to leave behind a "self-acting Constitution."[31]

Article VIII of the Ohio Constitution, even after its modern-day amendments, still largely prohibits state and municipal governments from ever making loans or becoming a joint owner in private enterprises. It was clear then that these provisions were intended to "prohibit the state from becoming directly involved with private businesses, either by lending its credit or becoming an equity owner or associate," and to halt practices that would "put the state's money and credit at risk in business schemes that often were risky at best."[32] The sections forbid "the union of public and

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28 Id., p. 19.

29 Id., p. 20.

30 Isaac Franklin Patterson, *The Constitutions of Ohio* 17-20 (The Arthur H. Clark Co 1912).

31 Id., at 21 (noting that "the people had learned that the legislature could not always be trusted).

32 Isaac Franklin Patterson, *The Constitutions of Ohio* 17-20 (The Arthur H. Clark Co 1912). This text is considered the authoritative guide to this history of Ohio Constitutions, both by Ohio Courts and by legal search engines such as *Westlaw*.

private capital or credit in any enterprise whatsoever"[33] and prohibit governmental "ventures that subsidize commerce or industry."[34]

Consequently, the enforcement of Articles VIII and XIII of the Ohio Constitution are of great public importance: these articles mandate foundational structural restraints on state spending, indebtedness, and corporate privilege. Moreover, they are the very provisions that were devised to respond to the issues that precipitated the 1851 Ohio Constitution.

C. Ohioans' stake in enforcement of their constitution is a sufficient interest to maintain standing to enforce constitutional limits on state government's spending, indebtedness, and conferral of special corporate privilege.

Every Ohioan has a stake in ensuring that his government is complying with Ohio's spending and debt limits: the state's failure to adhere to those limits is ultimately likely to haunt the taxpayers through increased taxes and/or reduced government services. And the inverse of this, that no Ohioan has such a stake, would invite the absurd result of this court rendering key constitutional provisions unenforceable.

The only *Ohio* principle of law the Appellate Court relied on to block Appellants' standing is the 1954 case of *State ex rel. Masterson v. Ohio State Racing Commission, which sets forth the following proposition:* "a taxpayer cannot bring an action to prevent the carrying out of a public contract or the expenditure of public funds unless he had some special interest therein by reason of which his own property rights are put in jeopardy. In other words, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally."[35]

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[33] Id.

[34] *State ex rel. Tomino v. Brown* (1989), 47 Ohio St.3d 119, 549 N.E.2d 505, citing Gold, Public Aid to Private Enterprises the Ohio Constitution: Sections 4, 6, and 13 of Article VIII in Historical Perspective (1985), 16 U.Tol.L.Rev. 405.

[35] 162 Ohio St. 366, 123 N.E.2d 1, relying solely on 39 Ohio Jurisprudence, 22, Section 12; 52 American Jurisprudence, 3, Section 3, rather than prior Ohio precedent.

This expression, through crude application, has taken on a life of its own, despite several overriding considerations. First, the same case also explains that the "general rule" is that "[e]ven in the absence of legislation, a taxpayer has a right to call upon a court of equity to interfere to prevent the consumation of a wrong such as occurs when public officers attempt to make an illegal expenditure of public money, or to create an illegal debt, which he, in common with other property holders of the taxing district, may otherwise be compelled to pay."[36]

Second, also in 1954, the Ohio Supreme Court explained that "as a matter of public policy, a citizen of a community does have such an interest in his government as to give him capacity to maintain a proper action to enforce the performance of a public duty affecting himself as a citizen and citizens generally. Where a public right, as distinguished from a purely private right, is involved, a citizen need not show any special interest therein, but he may maintain a proper action predicated on his citizenship relation to such public right. This doctrine has been steadily adhered to be this court over the years."[37] Thus, "it is sufficient to sustain the right of the relator to maintain the suit that he show that he is a citizen and as such interested in the execution of the laws."[38]

Third, the capacity to challenge unlawful government spending and indebtedness in one's capacity as a citizen or taxpayer who wishes to force adherence to the Ohio Constitution is deeply-rooted in Ohio precedent. In *Mayer v. Ames* (1938), 133 Ohio St. 458, 14 N.E.2d 617, this Court held "[i]f the ordinance is invalid the expenditure for such a station would be improper and constitute a misapplication. Consequently this court is of the opinion that as a taxpayer the plaintiff possesses the

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[36] Id.

[37] *State ex rel. Newell v. Brown* (1954), 162 Ohio St. 147, at 151, 122 N.E.2d 105; see also *State v. Brown*, 38 Ohio St. 344; *State v. Henderson*, 38 Ohio St. 644, 649; *State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656, 32 N.E. 750; *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 64 N.E. 558; and *Brissel v. State ex rel. McCammon*, 87 Ohio St. 154, 100 N.E. 348.

[38] Id.

necessary capacity to maintain this action [for misapplication of public funds]."[39] And in *Green v. State Civil Service Commission*, this Court ruled "a taxpayer has sufficient interest to maintain an action to enjoin public officers from the commission of acts in excess of legal authority and requiring the expenditure of public money.[40] In *State ex rel. Scott v. Masterson***,** the Court held "[i]t appears that the relators as taxpayers and electors have sufficient interest in the execution of the laws to maintain this action."[41] And in *State ex rel. Blackwell, a Taxpayer, v. Bachrach et al., City Council of Cincinnati*, this court held 'An action in mandamus, where the relief sought is the enforcement of a public duty by a public officer or board, [an action] may be maintained by the relator, where he shows that he is a citizen and as such is interested in the execution of the laws.'

Fourth, the Appellate Court and Appellees' rationales for barring these Appellants' claims are extremely weak. The Appellate Court relied on the following rationales previously posited by the Courts of Appeals for the Twelfth and Tenth Districts, respectively: (1) "such a broad common-law standing rule would subject most government actions to a taxpayer suit because most state activities are funded, in some way and to some degree, with general tax revenues";[42] (2) "[s]uch a rule also would run contrary to clear federal precedent, which Ohio courts regularly follow on matters of standing;"[43] and (3) "public officials should not be subjected to constant judicial interference."[44]

None of these rationales are sufficient to defeat Ohioans' access to enforcing the Ohio Constitution. First, federal precedent must play no rule in this Court's analysis. Secondly, subjection of "most government actions" to judicial scrutiny is perfectly consistent with the Ohio Constitution,

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39 *Mayer v. Ames* (1938), 133 Ohio St. 458, 14 N.E.2d 617

40 *Green v. State Civil Service Commission* (1914)**,** 90 Ohio St. 252, 107 N.E. 531, State ex rel. v. City of Newark et al., 57 Ohio St. 430, 49 N. E. 407; Elyria Gas & Water Co. v. City of Elyria, 57 Ohio St. 374, 49 N. E. 335.

41 (1962), 173 Ohio St. 402, 183 N.E.2d 376.

42 *Brinkman*, supra.

43 *Brinkman*, supra.

44 *Gildner v. Accenture LLP*, 2009-Ohio-5335.

and is only likely to result in its strict enforcement. Further, concern over this reflects the activist placement of a normative policy preference in favor of less litigation over enforcement of the state's constitution. In any event, this concern is overblown: rarely will a private Ohio citizen (1) maintain a sufficient pecuniary interest to spend on the attorneys fees necessary to challenge unlawful government spending; and (2) public interest organizations only have so many resources, and are likely to focus on extraordinary government actions, where the likelihood of success is high. Finally, the notion that public officials should not be subjected to judicial interference is wrong as a matter of law: in Ohio, we regularly enjoin official acts that violation the state constitution, and must continue to do so, if that document is to have any meaning.

Finally, and most importantly, the "personal stake" or "special interest" rule simply does not apply to spending, debt, and corporate welfare limits on state government, where all Ohioans have an equal interest that is relatively the same. When government fails to follow the constitution, all are impaired, but absent this Court's relief, none will be impaired sufficiently to enforce the constitution when the legislature transgresses it. This Court must answer the following question, in considering whether to bar these appellants from seeking to enforce the Ohio Constitution against their legislature: If Appellants cannot bring this case now, who can? And when? If it cannot identify another party that has standing, then Ohio standing jurisprudence will have swung to the point that the Ohio Constitution is unenforceable, the judiciary has neutered itself, and the Ohio General Assembly is all powerful.

CONCLUSION

This Court must accept jurisdiction over the matter, and adjudicate standing to enforce the Ohio Constitution, once and for all.

Respectfully submitted,

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