

Additional Relators:

STATE ex rel. OHIO STATE REPRESENTATIVE ANDY THOMPSON
77 South High, 11th Floor
Columbus, OH 43215

STATE ex rel. OHIO STATE REPRESENTATIVE RON HOOD
77 South High, 12th Floor
Columbus, OH 43215

STATE ex rel. OHIO STATE REPRESENTATIVE RON MAAG
77 South High, 13th Floor
Columbus, OH 43215

STATE ex rel. OHIO STATE REPRESENTATIVE JOHN BECKER
77 South High, 12th Floor
Columbus, OH 43215

and

STATE ex rel. RIGHT TO LIFE OF GREATER CINCINNATI, INC.
1802 W. Galbraith Rd.
Cincinnati, OH 45239

This action is brought in the name of the State of Ohio on Relation of Relators State Representatives RON YOUNG, MATT LYNCH, ANDY THOMPSON, RON HOOD, JOHN BECKER, and RON MAAG, and CLEVELAND RIGHT TO LIFE, INC., and RIGHT TO LIFE OF GREATER CINCINNATI, INC. (collectively, the "Relators") who are petitioning this Honorable Court for a Writ of Mandamus and Prohibition against Respondents State of Ohio Controlling Board and Ohio Department of Medicaid.

INTRODUCTION

1. Despite political sharp political overtones associated with expansion of Medicaid spending and eligibility in Ohio, this case is not about whether the controversial and highly-contested expansion is wise public policy. Rather, the salient and critical legal issue before the Court is whether the Executive Branch of government may effectuate such a major policy change *administratively* - - not only without a vote of the Ohio General Assembly, but over the objections of the General Assembly, as expressed through its unambiguous acts.

2. The expansion of Medicaid spending in Ohio, through receipt of federal funding with considerable conditions attached, is without question a major policy decision that the Ohio Constitution requires the legislature to make: it involves the appropriation of billions of dollars, implicates the means of receiving health care for as many as 360,000 Ohioans, and as explained by the Supreme Court of the United States in *National Federation of Independent Business v. Sebelius*, the spending expansion transforms a state's Medicaid program from "a program to care for the neediest among us" to "an element of a comprehensive national plan to provide universal health insurance coverage" that "dramatically increases state obligations under Medicaid," and is "an attempt to foist an entirely new health care system upon the States." (Elsewhere the Court characterizes the expansion as "a *new* health care program" and "a shift in kind.").

3. The Ohio Constitution forbids the delegation of such major policymaking authority to a small administrative board of legislators and executive branch officials where those policy outcomes

diverge from the expressed intent of the Ohio General Assembly. Accordingly, the State of Ohio Controlling Board's administrative expansion of Medicaid spending fails statutory and constitutional scrutiny.

4. The Relators have a clear legal right to reversal of the Controlling Board's action expanding Medicaid spending in Ohio: because the Controlling Board is without authority act in a manner contrary to the intention of the General Assembly as expressed through its acts, its October 21, 2013 appropriation of federal funds to expand Medicaid spending, as contemplated by the 2010 Patient Protection and Affordable Care Act, must be treated as a nullity by Ohio public officials.

5. Relators are entitled to a writ of mandamus ordering Respondent Ohio Controlling Board to vacate its void and unlawful October 21, 2013 order appropriating funds to expand Medicaid spending in Ohio in response to Controlling Board Request No. MCD0100009.

6. Further, this Court had determined that mandamus is the proper remedy to review Controlling Board decision, there is no appellate review otherwise available, and absent a court order prior to January 1, 2014, Ohio becomes bound, in response to its dealings with the federal government, to spend state and federal funds on the expansion of the Medicaid entitlement articulated in the ACA.

FACTUAL BACKGROUND

The "Affordable Care Act" Requires Expanded Medicaid Spending

7. This matter has its origins in the Medicaid spending expansion mandated by the 2010 Patient Protection and Affordable Care Act ("ACA").

8. The ACA amended Section 1902 of the Social Security Act to require each state to provide Medicaid coverage for a specific expansion population – primarily adults under 138 percent of poverty who do not have either a disability or children at home.

9. Specifically, the ACA added division (a)(10)(A)(i)(VIII) to Section 1902 to require that, as a condition of receiving federal Medicaid dollars, a state's Medicaid state plan "must ... provide [for] making medical assistance available ... to all individuals ... beginning January 1, 2014, who are under 65

years of age, not pregnant, not entitled to, or enrolled for, benefits under [Medicare Part A], or enrolled for benefits under [Medicare Part B], and are not described in a previous subclause of this clause, and whose income ... does not exceed 133 percent of the poverty line [with a 5-percent disregard that increases the limit to 138 percent of the poverty line] ... applicable to a family of the size involved,”

10. Section 1903 of the Social Security Act provides that a state can lose federal financial assistance if the state plan, or the state’s administration of the state plan, fails to comply with Section 1902 of the Social Security Act.

The Supreme Court of the United States adjudicates mandatory expansion of Medicaid Spending

11. In *National Federation of Independent Business v. Sebelius*, the State of Ohio characterized the expansion of Medicaid in the manner the ACA and the Controlling Board have authorized as “a dramatic expansion in health care coverage effected by the Act.” See 132 S.Ct. 2566 (2012).

12. In response, The Supreme Court upheld the ACA requirement on states to extend Medicaid coverage but restricted the federal government’s enforcement authority for that provision, rendering it optional for states to comply. See 132 S.Ct. 2566 (2012).

13. Specifically, the Court held “[W]e determine, first, that § 1396c is unconstitutional when applied to withdraw existing Medicaid funds from States that decline to comply with the expansion.”

14. Further, the Court held “The Court today limits the financial pressure the Secretary may apply to induce States to accept the terms of the Medicaid expansion. As a practical matter, that means States may now choose to reject the expansion; that is the whole point. But that does not mean all or even any will. Some States may indeed decline to participate, either because they are unsure they will be able to afford their share of the new funding obligations, or because they are unwilling to commit the administrative resources necessary to support the expansion.” See 132 S.Ct. 2566 (2012).

15. The Court concluded “Nothing in our opinion precludes Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use. What Congress is not free to do is to penalize States

that choose not to participate in that new program by taking away their existing Medicaid funding. * * * In light of the Court's holding, the Secretary cannot apply § 1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion." See 132 S.Ct. 2566 (2012).

16. The Supreme Court explained "There is no doubt that the [ACA] dramatically increases state obligations under Medicaid. The current Medicaid program requires States to cover only certain discrete categories of needy individuals—pregnant women, children, needy families, the blind, the elderly, and the disabled. 42 U.S.C. § 1396a(a)(10). There is no mandatory coverage for most childless adults, and the States typically do not offer any such coverage. The States also enjoy considerable flexibility with respect to the coverage levels for parents of needy families. § 1396a(a)(10)(A)(ii). On average States cover only those unemployed parents who make less than 37 percent of the federal poverty level, and only those employed parents who make less than 63 percent of the poverty line." 132 S.Ct. 2566 (2012).

Supreme Court of the United States explains the Impact of ACA-Expanded Medicaid Spending

17. The Supreme Court explained "The Medicaid provisions of the Affordable Care Act, in contrast, require States to expand their Medicaid programs by 2014 to cover *all* individuals under the age of 65 with incomes below 133 percent of the federal poverty line. § 1396a(a)(10)(A)(i)(VIII). The Act also establishes a new "[e]ssential health benefits" package, which States must provide to all new Medicaid recipients—a level sufficient to satisfy a recipient's obligations under the individual mandate. §§ 1396a(k)(1), 1396u-7(b)(5), 18022(b). The Affordable Care Act provides that the Federal Government will pay 100 percent of the costs of covering these newly eligible individuals through 2016. § 1396d(y)(1). In the following years, the federal payment level gradually decreases, to a minimum of 90 percent. In light of the expansion in coverage mandated by the Act, the Federal Government estimates that its Medicaid spending will increase by approximately \$100 billion per year, nearly 40 percent above current levels. 132 S.Ct. 2566 (2012).

18. The Supreme Court further explained "Medicaid spending accounts for over 20 percent of the average State's total budget, with federal funds covering 50 to 83 percent of those costs. * * * In

addition, the States have developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid." See 132 S.Ct. 2566 (2012).

19. The Supreme Court specifically cited the uncompensated "increased state administrative expenses," associated with expansion, and also suggested as tenuous the presumption 'that the Federal Government will continue to fund the expansion at the current statutorily specified levels,' observing 'it is not unheard of, however, for the Federal Government to increase requirements in such a manner as to impose unfunded mandates on the States,' and describing the expansion as 'an attempt to foist an entirely new health care system upon the States.' (Elsewhere the Court characterizes the expansion as "a new health care program"). 132 S.Ct. 2566 (2012).

20. The Supreme Court further explained "The Medicaid expansion, however, accomplishes a shift in kind, not merely degree. The original program was designed to cover medical services for four particular categories of the needy: the disabled, the blind, the elderly, and needy families with dependent children. See 42 U.S.C. § 1396a(a)(10). Previous amendments to Medicaid eligibility merely altered and expanded the boundaries of these categories. Under the Affordable Care Act, Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level. It is no longer a program to care for the neediest among us, but rather an element of a comprehensive national plan to provide universal health insurance coverage." 132 S.Ct. 2566 (2012).

21. At least 26 states have explicitly rejected the ACA's expanded Medicaid spending and conjoined federal funding.

22. States that have opted for expanded Medicaid spending have done so only with affirmative legislative approval.

The Ohio General Assembly Rejects ACA Expansion of Medicaid Spending

23. On February 4, 2013, the Ohio General Assembly introduced the State of Ohio biennium budget bill, the fiscal year 2014-2015 budget, as House Bill 59.

24. The initial version of HB 59 consisted of the Governor's budget proposals.

25. The proposals included ACA expansion of Medicaid spending through receipt of federal funds, in a manner identical to the October 11, 2013 request made to the Controlling Board.

26. Specifically, proposed section 5163.04 of HB 59 originally stated that “. . . the [M]edicaid program may cover the group, or one or more subgroups of the group, described in the ‘Social Security Act,’ section 1902(a)(10)(A)(i)(VIII) . . .” subject to certain restrictions and conditions.⁷

27. Soon after the introduction of HB 59, the Ohio House of Representatives deliberately removed the section 5163 ACA Medicaid expansion proposal.

28. The Ohio Senate did not reintroduce the proposal for expanded Medicaid spending.

29. In June of 2013, the Ohio House and Senate passed and submitted to the Governor, HB 59 - the biennium budget bill - with language expressly prohibiting ACA Medicaid expansion: “The [M]edicaid program shall not cover the group described in the ‘Social Security Act,’ section 1902(a)(10)(A)(i)(VIII), 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).”

30. The clear intent of the Ohio General Assembly not to appropriate the federal funds linked with ACA Medicaid expansion funds contained in the request was expressed in its prevailing appropriation act, Am. Sub. HB 59: (1) The General Assembly included the following prohibition in Am. Sub. HB 59: “The medicaid program shall not cover the group in the “Social Security Act,” section 1902(a)(10)(A)(i)(VIII).” (The requested appropriation seeks “[t]o cover individuals listed under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act”); and (2) The General Assembly added over \$400M in additional Medicaid funding to Am. Sub. HB 59 as a result of removing from the budget the same appropriation currently being requested by the Director of Medicaid.

31. The final version of House Bill 59 explicitly stated, in Sec. 5163.04, “The medicaid program shall not cover the group described in the “Social Security Act,” section 1902(a)(10)(A)(i)(VIII), 42 U.S.C. 1396a(a)(10)(A)(i)(VIII).

32. This section of federal law describes the population to whom the Controlling Board voted to accept federal funds to expand Medicaid spending - - the federal funds are conditioned on use for and spending on the putatively expanded population.

33. On June 30, 2013, Governor Kasich line-item vetoed what he described as the "Prohibition on Extending Medicaid Coverage," referencing Section 5163.04, and explaining "The item would prohibit the Ohio Medicaid program from covering the group identified in 42 USC 1396(a)(10)(A)(i)(VIII)(i.e. all individuals who, as of January 1, 2014, are under 65 years of age, not pregnant, not entitled to or enrolled for benefits under Medicare Parts A or B, and whose income does not exceed 133 percent of the poverty line)," "This item also foregoes federal funding," and "this veto is in the public interest." See Exhibit B.

34. Formal Bill Analysis explains as follows: "The federal health care reform legislation enacted in 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, includes a major expansion of the Medicaid program. As enacted, the federal health care reform legislation requires a state's Medicaid program to cover, beginning January 1, 2014, individuals who (1) are under age 65, (2) not pregnant, (3) not entitled to (or enrolled for) benefits under Medicare Part A, (4) not enrolled for benefits under Medicare Part B, (5) not otherwise eligible for Medicaid, and (6) have incomes not exceeding 133% (138% after using individuals' modified adjusted gross incomes) of the federal poverty line. Although the federal health care reform legislation made the Medicaid expansion a mandatory eligibility group, the U.S. Supreme Court, in its 2012 ruling on the reform, effectively made the expansion an optional eligibility group by prohibiting the U.S. Secretary of Health and Human Services from withholding all or part of a state's other federal Medicaid funds for failure to implement the expansion. The Governor vetoed a provision that would have prohibited the Medicaid program from covering the expansion group."

The Controlling Board Attempts to Legislate in Place of the General Assembly

35. On October 11, 2013, the Director of Medicaid requested that the Controlling Board authorize the same group for which the Ohio General Assembly prohibited expanded coverage, stating

"This appropriation would provide Medicaid Coverage to adults without dependent children between 0% and 138% of the Federal Poverty Level (FPL) and parents otherwise not covered by current Medicaid eligibility levels up to 138% FPL," referencing the Social Security Act's federal expansion of Medicaid coverage." See Exhibit A.

36. The Director of Medicaid's October 11, 2013 Appropriation Request further sought for the Controlling Board to make the clear legislative policy choice that "If this federal medical assistance percentage is lowered, state funds will not be used to supplant federal funds."

37. On October 21, the Controlling Board granted the Director of Medicaid's Appropriation request, No. MCD0100009.

38. The granting of Request No. MCD0100009 took place in response to the replacement of several Controlling Board members on the day of the hearing.

39. At the hearing, Medicaid Director McCarthy conceded the absence of any precedent for Controlling Board action approving program and funding levels that the Ohio General Assembly had expressly sought to prevent.

40. While legislative hearings on program and funding levels permit opponent and interested party testimony, the October 21 Controlling Board hearing did not permit the submission of opponent or interested party testimony; only proponents of the funding request were permitted to appear and address the Board.

41. Numerous Controlling Board members repeatedly expressed concern over the unprecedented controversy of the issue and the unprecedented amount of funding.

42. To promote an affirmative vote at the hearing, Medicaid Director McCarthy informed the Controlling Board of the Administration's interest in expanding Medicaid spending even without the federal funds, and bankrupting Ohio's Medicaid system by the end of Fiscal Year 2014.

43. The Controlling Board narrowly voted "yes" on the Request, with a state representative who had been installed earlier that morning and an Executive Branch official supplying the decisive votes.

PARTIES

44. Relators restate the allegations in all preceding paragraphs as if fully restated herein.

45. Representatives RON YOUNG, MATT LYNCH, ANDY THOMPSON, RON HOOD, JOHN BECKER, and RON MAAG, are duly elected members of the Ohio House of Representatives. (The "Representatives").

46. None of the Representatives are on the State of Ohio Controlling Board.

47. Each of the Representatives took legislative action to prohibit ACA Medicaid expansion, whether through voting for the prohibition on expanded Medicaid spending in HB 59, through supporting amendment of HB 59 to limit receipt of the federal funds appropriated by the Controlling Board, or through some other means.

48. Each of the Representatives represents a House District of approximately 100,000 Ohioans, and the Representatives thus represent the interests of 600,000 Ohioans.

49. Each Representatives is disenfranchised in his legislative capacity through the Controlling Board's exercise of legislative authority contrary to the intentions of the Ohio General Assembly, as expressed through acts to which each Representative contributed.

50. Each Representative has a constitutional right and duty to make major policy decisions affecting the State of Ohio's health care system, pursuant to Article II of the Ohio Constitution, and each Representative wishes to vindicate that right and duty in this action.

51. Relator Cleveland Right to Life, Inc. (Cleveland RTL) is a non-profit corporation that represents pro-life citizens from over 8 counties in the region, making it one of the largest pro-life organizations in the State of Ohio. It focuses its efforts first and foremost at the local level to achieve local solutions and then cooperates with the state and national pro-life efforts as directed and needed."

52. Cleveland RTL has invested significant resources in opposing the expansion of ACA Medicaid spending in Ohio and the receipt of federal funds associated with the ACA expansion because those funds, directly and/or indirectly, will be used to jeopardize unborn life.

53. Right to Life of Greater Cincinnati, Inc. is also a non-profit Ohio Corporation. The mission of Right to Life of Greater Cincinnati, Inc., Cincinnati Right to Life Educational Foundation, and the Right to Life of Greater Cincinnati Political Action Committee is to end abortion and prevent euthanasia in Greater Cincinnati.

54. RTL of Greater Cincinnati has also invested significant resources in opposing the expansion of ACA Medicaid spending in Ohio and the receipt of federal funds associated with the ACA expansion because those funds, directly and/or indirectly, will be used to jeopardize unborn life.

55. Each Right to Life group seeks debate of the receipt of federal ACA Medicaid expansion funding in the Ohio General Assembly where, as opposed to before the Controlling Board, it has an opportunity to appear and present policy considerations in opposition to the funding.

56. Pursuant to R.C. 127.12, Respondent the State of Ohio Controlling Board consists of seven members: three from each house of the General Assembly and either the Director of the Office of Budget and Management or his appointee.

57. Under R.C. 127.14(B), the Controlling Board does not exercise sovereign power. The board is an administrative agency concerned with the internal operation of the budgeting and appropriating process under this section.

58. Respondent Ohio Department of Medicaid maintains, pursuant to R.C. 5163, authority over eligibility requirements for the Medicaid program.

JURISDICTION

59. This Court maintains original jurisdiction over this action Section 2(B)(1)(b) & (d) of Article IV of the Ohio Constitution, as well as pursuant to its doctrine established in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451.

60. This Court traditionally reviews the lawfulness of Controlling Board actions through mandamus, and holds that this is an essential check on Controlling Board authority. See *State ex rel.*

Meshel v. Keip (1980), 66 Ohio St.2d 379 ("Mandamus relief is ordinarily a sufficient process for review of quasi-legislative exercise of power.")

CLAIM FOR WRIT OF MANDAMUS AND PROHIBITION

Count 1: The State of Ohio Controlling Board must reconvene and deny the Ohio Department of Medicaid's October 11 Request for Increased Medicaid Appropriations (Controlling Board Request No. MCD0100009)(Granted on October 21, 2013).

Count 2: The State of Ohio Department of Medicaid must, in undertaking affirmative administrative duties, treat the Controlling Board's Appropriation as Void and Unlawful

61. The State of Ohio Controlling Board abused its discretion and acted in clear disregard of the law by passing the Department of Medicaid's Request for Appropriation of Funds to provide a taxpayer-funded entitlement not authorized by the Ohio General Assembly and contrary to the intent of the Ohio General Assembly.

62. The Ohio Controlling Board's expansion of Medicaid violates the clear limits on its own authority, and accordingly, also violates the clear limits of the Ohio Constitution.

63. Section 2, Article I of the Ohio Constitution provides that "all political power is inherent in the people."

64. Section 22, Article II of the Ohio Constitution states: "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

65. Section 1, Article II of the Ohio Constitution, states, in 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.*** "

66. Section 26 of Article II states: "All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect

upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.”

67. This Court has explained that Sections 1 and 26 of Article II of the Ohio Constitution to stand for the principle that "It is the General Assembly, not a body consisting of six legislators and a member from the executive branch, which is granted the legislative power. The unfettered delegation of power to such a body is not the constitutional prerogative of the General Assembly; however, the judicial branch of this state is the appropriate body to assess the legitimacy of the delegation and of the use of any power granted." *State ex rel. Meshel v. Keip* (1980), 66 Ohio St.2d 379, citing *Matz v. J. L. Curtis Cartage Co.* (1937), 132 Ohio St. 271, at pages 280-281.

68. This Court has further explained that Sections 1 and 26 of Article II of the Ohio Constitution stand for the principle that "[b]ecause the General Assembly cannot delegate its legislative authority, the Controlling Board cannot make laws." *State ex rel. Meshel v. Keip* (1980), 66 Ohio St.2d 379.

69. This Court has further explained that "[t]he issues of the constitutionality of the Controlling Board and of the lawfulness of its actions are, therefore, justiciable. As a consequence, we refuse to extend the political question doctrine to [cases regarding it]." See *State ex rel. Meshel v. Keip* (1980), 66 Ohio St.2d 379.

70. The Supreme Court of Ohio has consistently held that there must be some discernable limits on the actions of administrative bodies or officers. *Blue Cross v. Ratchford* (1980), 64 Ohio St.2d 256; *Weber v. Bd. of Health* (1947), 148 Ohio St. 389; *Matz*, supra.

71. The Supreme Court of Ohio has explained that the Controlling Board is constitutional *only* because "[a] statute does not unconstitutionally delegate legislative power if it establishes, through legislative policy and such standards as are practical, an intelligible principle to which the administrative officer or body must conform and further establishes a procedure whereby exercise of the discretion can be reviewed effectively.”

72. R.C. 127.17 states: "The Controlling Board shall take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the general assembly."

73. This Court has explicitly held that the Controlling Board's authority is sufficiently limited to its constitutional confines only because of (1) R.C. 127.17; when combined with (2) "the availability of mandamus relief." See *State ex rel. Meshel v. Keip* (1980), 66 Ohio St.2d 379 ("Mandamus relief is ordinarily a sufficient process for review of quasi-legislative exercise of power.")

74. This Court has further held "The General Assembly [has] not unconstitutionally delegated legislative authority to the Controlling Board" only because "pursuant to R.C. 127.17, [any action] cannot be contrary to the legislative intent regarding program goals and levels of support."

75. The plain language of R.C. 127.17 requires this Court to ascertain the intentions of the *General Assembly alone*, without reference to the intention of the executive branch, and thus, without reference to the Governor's line-item veto of the legislative acts in question.

76. The Controlling Board's October 21, 2013 authorization and/or appropriation of funding for ACA Medicaid expansion violates the clear intent of the Ohio General Assembly as expressed in its acts of (1) removing ACA Medicaid expansion from HB 59; and (2) prohibiting ACA Medicaid expansion in HB 59.

77. This Court has explained that "Short of an outright declaration, we doubt there can exist a clearer expression of legislative intent" than the General Assembly's removal of a provision from a piece of legislation prior to its passage. See *Caldwell v. State* (1926), 115 Ohio St. 458, 466-467; 85 Ohio Jurisprudence 3d (1988) 217, Statutes, Section 215.

78. Even subsequent to an executive branch veto, courts routinely determine *legislative intent* through legislative history. *Taylor v. United States*, 749 F.2d 171, 174 (3d Cir.1984); *Clifton v. Heckler*, 755 F.2d 1138, 1145 n. 15 (5th Cir.1985).

79. In expanding program funding and/or levels of support, the Controlling Board purported to act pursuant to R.C. 131.35.

80. R.C. 131.35 provides "Controlling board authorization for a state agency to make an expenditure of federal funds constitutes authority for the agency to participate in the federal program providing the funds."

81. However, R.C. 131.35 is subject to, as it must be to be held a constitutional delegation of legislative authority, R.C. 127.17.

82. In fact, the Department of Medicaid and Controlling Board publicly acknowledge that R.C. 131.35 is subject to R.C. 127.17: "Controlling Board authorization to expend money under R.C. 131.35 must accord not only with Article II, Section 22 of the Constitution, but also with the prohibition of R.C. 127.17 against the Board's taking any action that does not carry out legislative intent 'regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts . . .'"¹

83. On October 16, 2013, 38 state representatives, including all but one member of leadership, filed a formal protest to the then-proposed Controlling Board expansion of in the Ohio House Journal, declaring as follows: "We, the undersigned members of the Ohio House of Representatives, hereby protest the filing of a controlling board request by the Director of Medicaid, John McCarthy, seeking to appropriate additional funds specifically not appropriated in the prevailing appropriation act of the 130th General Assembly, Amended Substitute House Bill 59." See Ohio House of Representatives Journal, October 16, 2013, at 1262 (Clerk's Notation - A Protest).

84. The Protest explains: "the request does not carry out the clear intent of the General Assembly as indicated in its passage of Am. Sub.House Bill 59 and should be denied."

¹ See *The Controlling Board: AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF*, May 22, 2013, available at <http://www.healthtransformation.ohio.gov/LinkClick.aspx?fileticket=WXPjoOhbDcU%3d&tabid=160>, re-published by "The Governor's Office of Health Transformation" on October 11, 2013 at <http://www.healthtransformation.ohio.gov/Budget/ExtendMedicaidServices.aspx>.

85. The Protest explain the acts of the General Assembly that comprise its intention not to expand Medicaid spending and programs in Ohio: "Here, the clear intent of the Ohio General Assembly not to appropriate the funds contained in the request was expressed in its prevailing appropriation act, Am. Sub. HB 59:1) The General Assembly included the following prohibition in Am. Sub HB 59: "The medicaid program *shall not cover* the group in the "Social Security Act," section 1902(a)(10)(A)(i)(VIII)." (emphasis added). The requested appropriation seeks "[t]o cover individuals listed under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act" (emphasis added); 2) The General Assembly added over \$400M in additional Medicaid funding to Am. Sub. HB 59 as a result of removing from the budget the same appropriation currently being requested by the Director of Medicaid; 3) The General Assembly did not appropriate any funds "[t]o cover individuals listed under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act," even though estimated state costs to do so are \$13 to \$22M." (Emphasis in original).

86. The Protest declares that "This request [to expand Medicaid through the Controlling Board] is thinly-veiled legislation creating new eligibility levels and funding levels for Medicaid. In fact, the request itself admits as much."

87. This Court must agree: Because the Controlling Board is without authority act in a manner contrary to the intention of the General Assembly as expressed through its acts, it, On October 21, 2013, acted without authority to expand Medicaid spending levels and programmatic levels as contemplated by the ACA, and its approval must be treated as a nullity by Ohio public officials.

88. Relators are entitled to a writ of mandamus ordering Respondent Ohio Controlling Board to vacate its void and unlawful October 21, 2013 order appropriating funds to expand Medicaid spending in Ohio in response to Controlling Board Request No. MCD0100009.

89. Further, pursuant to R.C. 5163.02, (1) "the Medicaid Director shall adopt rules as necessary to implement this chapter;" (2) "the rules shall establish eligibility requirements for the Medicaid program;" and (3) "the standards established under rules adopted under this section shall be used to determine eligibility for Medicaid."

90. Relators are entitled to a writ of mandamus ordering Respondent Ohio Department of Medicaid to, when proceeding with administering Ohio's Medicaid program, including but not limited to taking any action pursuant to defining eligibility standards under R.C. 5163.02, engage in rulemaking without reference to or reliance on the void and unlawful Controlling Board order.

Clear Public Right

91. Relators, on their own behalf and on behalf of their hundreds of thousands of constituents, maintain a clear public right, pursuant to R.C. 127.17 and the constitutional requisites of their office, to have their intentions taken into account by the State of Ohio Controlling Board.

92. Right to Life Relators maintain a clear public right to object, in the General Assembly and elsewhere to the appropriation of funds inconsistent with their mission and the General Assembly's intent.

Clear Public Duty

93. The State of Ohio Controlling Board, when voting, must comply with the public duty of accounting for General Assembly intentions, as expressed through the acts of the Ohio General Assembly.

94. The Controlling Board must be compelled to reconvene and vote in a matter consistent with the clear intentions of the General Assembly regarding Medicaid Expansion, as expressed through its acts.

95. The Department of Medicaid has a duty to disregard the Controlling Board's appropriation in engaging in administrative rulemaking and other actions related to eligibility.

No Adequate Remedy at Law

96. Relators have not adequate remedy at law, and are reliant upon this Court for meaningful relief.

97. Ohio law provides no means for appealing a State of Ohio Controlling Board decision.

98. Absent meaningful relief, from this Court, the State of Ohio will be required, through its agreement with the federal government, to expand Medicaid spending, and dramatically expand the state Medicaid program in the process, effective January 1, 2014.

99. Consequently, both speedy and *final* relief is warranted on an expedited basis.

100. Further, it is a "well-settled principle" that "'where declaratory judgment would not be a complete remedy unless coupled with ancillary relief in the nature of mandatory injunction, the availability of declaratory injunction is not an appropriate basis to deny a writ to which the relator is otherwise entitled.'" *Dayton FOP*, 22 Ohio St.3d at 8, 22 OBR 1, 488 N.E.2d 181, quoting *State ex rel. Fenske v. McGovern* (1984), 11 Ohio St.3d 129, 11 OBR 426, 464 N.E.2d 525,

101. "A declaratory action, which merely announces the existence of a duty to be performed, has generally not been deemed as adequate as the writ of mandamus, which compels performance." 1 Antieau, *The Practice of Extraordinary Remedies* (1987) 300, Section 2.06.

102. Because a mandatory injunction is an extraordinary remedy, it does not constitute an adequate remedy in the ordinary course of the law. *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 818 N.E.2d 688 (2004); *State ex rel. Zupancic v. Limbach* (1991), 58 Ohio St.3d 130, 133; *State ex rel. Fenske v. McGovern*, 11 Ohio St.3d 129, paragraph one of the syllabus; *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141, paragraph six of the syllabus.

Great Public Interest and Importance

103. In addition to maintaining original jurisdiction over this matter through mandamus and prohibition, this matter is of great importance and interest to the public, and accordingly, should be resolved through original action in this Court.

104. As explained by the Supreme Court of the United States in *National Federation of Independent Business v. Sebelius*, the spending expansion transforms a state's Medicaid program from "a program to care for the neediest among us" to "an element of a comprehensive national plan to provide universal health insurance coverage" that "dramatically increases state obligations under Medicaid," and is "an attempt to foist an entirely new health care system upon the States." (Elsewhere the Court characterizes the expansion as "a new health care program" and "a shift in kind.").

105. 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.*"²

106. *Sheward* was a reiteration of the principles explained by this Court 60 years ago in *State ex rel. Newell v. Brown*, where it held "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 the performance of a public duty affecting himself and citizens generally."³

107. 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."⁴

108. There can be no dispute that enforcement of Ohio's very structure of government, including legislative checks and balances and separation of powers, as illustrated through Section 1, Article I and Sections 1 and 26 of Article II (requiring that the legislative power is vested in the General Assembly alone, and that the legislature must approve all laws of a general nature) are of great importance to the public.

109. This Court has emphasized that "The first, and defining, principle of a free constitutional government is the separation of powers." *State v. Bodyke*, 2010-Ohio-2424.

110. This Court has further emphasized that "[t]he essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others." *State ex rel. Bryant v. Akron Metro. Park Dist. of Summit Cty.* (1929), 120 Ohio St. 464, 473.

² *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 1999-Ohio--123, 715 N.E.2d 1062. (Emphasis added).

³ *State ex rel. Newell v. Brown* (1954), 162 Ohio St. 147, 122 N.E.2d 105. (Emphasis added).

⁴ *Id.* at 150-151, 54 O.O. at 393, 122 N.E.2d at 107. (Emphasis added).

111. Indeed, this Court had declared that "the Madisonian vision of the separation of powers * * * was designed to protect against [a] case [where] 'the fundamental principles of a free constitution, are subverted,'" and maintain vigilance against the "hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power."⁵

112. Further, the issue of expansion of Medicaid spending, as contemplated by the ACA, implicates the interests of taxpayers, the manner in which health care coverage will be provided to as many as 366,000 Ohioans (this number was produced by Medicaid Director McCarthy at the October 21, 2013 Controlling Board hearing) and the manner of public reimbursement for various health care providers.

113. Further, absent meaningful judicial oversight, there is nothing to prevent the Controlling Board - - a small group of legislators and executive branch officials not representative of the General Assembly as a whole - - from dramatically supplementing, amending, or altering public program and policy goals and levels in a manner inconsistent with the General Assembly's intentions.

114. This matter transcends partisan politics, as demonstrated by the political party affiliations of the proponents and opponents of the Controlling Board's actions.

115. On October 16, 2013, 38 state representatives, including all but one member of leadership, filed a formal protest to the then-proposed Controlling Board expansion of in the Ohio House Journal, declaring as follows: "Our protest is not about the merits or lack of merit in expanding Medicaid. Our protest goes to the fundamental form of government upon which our country was founded-a Republic of checks and balances and separation of powers. The General Assembly is a co-equal branch of government that made its intent abundantly clear. The controlling board request attempts to subvert that intent, and is contrary to the Ohio Constitution and current statutory law." See Exhibit C.

116. This case presents (1) no complex factual issues for review; and (2) only legal issues.

PRAYER FOR RELIEF

WHEREFORE, Relators pray for judgment against Respondents, and that the Court order the following:

⁵ *Bodyke, supra.*

- (1) The State of Ohio Controlling Board must adhere to its lawful jurisdictional authority, pursuant to R.C. 127.17, and must cease to exceed that limited authority authorized by law through continuing to maintain and enforce its unlawful appropriation of federal Medicaid funds;
- (2) Relators are entitled to a writ of mandamus and prohibition ordering Respondent Ohio Controlling Board to vacate its void and unlawful October 21, 2013 order appropriating federal funds to expand Medicaid spending in Ohio in response to Controlling Board Request No. MCD0100009;
- (3) Relators are entitled to a writ of mandamus ordering Respondent Ohio Department of Medicaid to engage in the necessary administrative rulemaking without reference to or reliance on the void and unlawful Controlling Board order;
and
- (4) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ 

Maurice A. Thompson (0078548)
1851 Center for Constitutional Law
208 E. State Street
Columbus, Ohio 43215
Tel: (614) 340-9817
Fax: (614) 365-9564
MThompson@OhioConstitution.org

STATE OF OHIO : ss.

COUNTY OF FRANKLIN

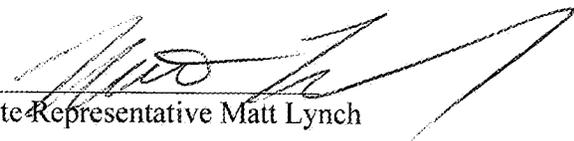
AFFIDAVIT

I, State Representative Matt Lynch, declare the following:

1. I have personal knowledge of the matters alleged in the Complaint.
2. The allegations contained herein are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

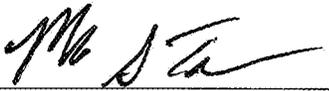
Executed this 21st day of October, 2013.

/s/ 
State Representative Matt Lynch

PRAECIPE TO CLERK

Please serve the foregoing Complaint for Writ of Mandamus and Prohibition on the Respondents named herein as follows:

Hon. Michael DeWine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215



Maurice A. Thompson

CERTIFICATE OF SERVICE

The foregoing was served upon the parties specified below this 22nd Day of October, 2013:

Hon. Mike DeWine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215



Maurice A. Thompson

RELATORS' EXHIBIT A

OCTOBER 21, 2013 CONTROLLING BOARD
APPROVAL OF REQUEST NO. MCD0100009 -
APPROPRIATION OF FEDERAL MEDICAID
EXPANSION FUNDS

STATE OF OHIO
 CONTROLLING BOARD
 30 East Broad Street, 34th Floor
 Columbus, Ohio 43215-3457
 (614) 466-5721 FAX:(614) 466-3813

FUND/APPROPRIATION REQUEST

[Attachments](#) [Print](#) [Print PDF](#) [Close](#)

Controlling Board No.
MCD0100009

Status: Approved
 Meeting Date: 10/21/2013

GENERAL INFORMATION		
Agency Medicaid	Authorization Requested Pursuant to Revised Code Section 131.35 <input checked="" type="checkbox"/> Increase Appropriation Authority <input type="checkbox"/> Create a New Fund <input type="checkbox"/> Establish Appropriation Authority	Fiscal Year(s) 2014-2015 Bill No. HB 59
Division/Institution Contracts & Procurement		

FUNDING INFORMATION							
Fund Group	Fund Code	Appropriation Line Item	Fund/Appropriation Line Item Name	FY	Current Appropriation Amount	Amount of Increase or New Fund	Total Appropriation Amount
	3F00	651623	Medicaid Services - Federal	2014	\$2,966,697,750.00	\$561,700,000.00	\$3,528,397,750.00
				2015	\$3,196,808,545.00	\$1,999,500,000.00	\$5,196,308,545.00

SIGNATURES	
 Agency Director or Authorized Agent	10/21/2013 On The Date Of
10/11/2013 Date	 Controlling Board President/OBM Director

AGENCY CONTACT			
Name: Jenelle Donovan-Lyle	Title: Legislative Liaison		
Phone: (614) 752 - 3770	Fax: (614) 752 - 3986	E-Mail: Jenelle.donovan-lyle@medicaid.ohio.gov	

REQUIRED EXPLANATION OF REQUEST

The Ohio Department of Medicaid respectfully requests Controlling Board approval to increase appropriation authority in fund 3F00, ALI 651623, Medicaid Services - Federal, by \$561,700,000 in SFY2014 and \$1,999,500,000 in SFY15.

This appropriation would provide Medicaid coverage to adults without dependent children between 0%-138% of the Federal Poverty Level (FPL) and parents otherwise not covered by current Medicaid eligibility levels up to 138% FPL. These individuals are enumerated in the Department of Medicaid's State Plan Amendment on eligibility as approved by the federal Centers for Medicare and Medicaid Services (CMS) on October 10, 2013.

The Social Security Act, section 1905(y), 42 USC 1396d(y), provides 100 percent federal funding for the newly eligible group in the state fiscal year 2014 and 2015 biennium. If this federal medical assistance percentage is lowered, state funds will not be used to supplant federal funds.

Attachments		Controlling Board Request No.: MCD0100009
Attachment Type	Attachment Description	
Other	SFY2015 Appropriation Increase	

Other	SPA Approval Letter
Other	Approved SPA
Other	Approved CMS 179

Fund/Appropriation Request Required Information	Controlling Board Request No.: MCD0100009
--	--

1. Identify the source of additional revenue (e.g., increase in fee, increase in state or federal grants, etc.).
The additional revenue is federal Medicaid funds.
2. If applicable, explain why creating and/or increasing a new fund and/or line item is more appropriate than depositing the revenue into an existing fund and increasing the appropriation authority of an existing line item.
N/A
3. Time line: Has the revenue been received? No
When is the revenue expected to become available? The revenue will be drawn at the time of expenditure.
4. For federal funds only, provide the following information:
 - a. Grant identification number from the Catalog of Federal Domestic Assistance: 93.778
 - b. Amount of state matching funds required: 0
 - c. Source (appropriation line item) of that match: N/A
 - d. Statutory or executive authority for participation in the program:
Ohio law gives the Medicaid Director express authority to seek a State Plan Amendment without additional legislation (RC 5162.07) and to change Medicaid eligibility within federal guidelines via a State Plan Amendment (RC 5163.03). On October 10, 2013, the federal CMS approved Ohio's SPA to provide Medicaid coverage to adults without dependent children between 0%-138% FPL (133% plus 5% income disregard) and parents otherwise not covered by current Medicaid eligibility levels up to 138% FPL.

Include a brief summary of the text or a copy of the reference.

Ohio law gives the Medicaid Director express authority to seek a State Plan Amendment without additional legislation (RC 5162.07) and to change Medicaid eligibility within federal guidelines via a State Plan Amendment (RC 5163.03). On October 10, 2013, the federal CMS approved Ohio's SPA to provide Medicaid coverage to adults without dependent children between 0%-138% FPL (133% plus 5% income disregard) and parents otherwise not covered by current Medicaid eligibility levels up to 138% FPL.
5. How will the additional appropriation and/or cash be used?
See chart below and attached for SFY2015.

Provide the following information below relative to this budgetary adjustment. NOTE: If a new fund and new appropriation authority are being requested, the "Current" and "Requested" columns are not required.

Account Category	Account Category Description	Current Appropriation Authority	Requested Increase in Appropriation	Total Appropriation Authority
500	Personal Services - Payroll	\$0.00	\$0.00	\$0.00
510	Purchases Personal Services and Others	\$0.00	\$0.00	\$0.00
520	Supplies and Maintenance	\$0.00	\$0.00	\$0.00
530	Equipment	\$0.00	\$0.00	\$0.00
550	Subsidies and Shared Revenue	\$2,966,697,750.00	\$561,700,000.00	\$3,528,397,750.00
570	Capital Items	\$0.00	\$0.00	\$0.00
590	Judgements, Settlements and Bonds	\$0.00	\$0.00	\$0.00
Other	Other	\$0.00	\$0.00	\$0.00
Total:		\$2,966,697,750.00	\$561,700,000.00	\$3,528,397,750.00

6. For each additional amount shown in the table, provide a short description of what the dollars will be used to accomplish. For example, if increasing a subsidy account category, provide detail on the added recipients or the allocation formula for distribution of moneys. For Account Category 500, respond to specific questions in number 9 below.

Account Category	Short Description
500	
510	
520	
530	

550	To cover individuals listed under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act.
570	
590	
Other	

7. Will this transfer be used to maintain current service levels, expand an existing program or activity, or begin a new program? Explain. This appropriation will allow Ohio Medicaid to cover adults without dependent children between 0%-138% FPL and parents otherwise not covered by current Medicaid eligibility levels up to 138% FPL.
8. Based upon the response to number 7, explain how these services or programs would have been funded if this additional funding were not available. These services would not be available.
9. Account Category 500-Personal Services:
- a. Explain why changes are being requested in the personal services account category 500.
N/A
 - b. How many existing staff are being affected by this transfer? 0
What appropriation line item are they currently being paid? N/A
 - c. How would these existing staff have been affected if these additional funds were not available?
N/A
 - d. Will new staff be hired as a result of the additional funds? No
10. List any other transfers involving these appropriation line items and/or cash approved by the Controlling Board in the current biennium, including the date and requested amount of the adjustment(s).

ALI	Transfer Date	Transfer Amount	CBR Number
-----	---------------	-----------------	------------

RELATORS' EXHIBIT B

JUNE 30, 2013 VETO MESSAGE OF THE
GOVERNOR, ACKNOWLEDGMENT OF AND VETO
OF GENERAL ASSEMBLY PROHIBITION ON
EXTENDING MEDICAID COVERAGE AND
FOREGOING AFFORDABLE CARE ACT FEDERAL
FUNDING FOR EXPANDED COVERAGE
("ITEM NUMBER 10")

STATE OF OHIO
Executive Department

OFFICE OF THE GOVERNOR

Columbus

VETO MESSAGES

**STATEMENT OF THE REASONS FOR THE VETO OF ITEMS IN
AMENDED SUBSTITUTE HOUSE BILL 59**

JUNE 30, 2013

Pursuant to Article II, Section 16 of the Ohio Constitution, which states that the Governor may disapprove any items in a bill making an appropriation of funds, I hereby disapprove the following items contained in Amended Substitute House Bill 59 and set forth below the reasons for so doing. The text I am disapproving is identified in this message by reference to the corresponding page and boxed text of the bill.

ITEM NUMBER 1

On page 2, delete the following boxed text, "935.01," "935.03," and "935.041".
On page 21, delete the following boxed text, "935.01," "935.03," and "935.041".
On page 641, delete the boxed text.
On page 642, delete the boxed text.
On page 643, delete the boxed text.
On page 644, delete the boxed text.
On page 645, delete the boxed text.
On page 646, delete the boxed text.
On page 647, delete the boxed text.
On page 3239, delete the following boxed text, "935.01," "935.03," and "935.041".

Dangerous Wild Animals/Spider Monkey Ownership and Standards Exemption

This item would remove spider monkeys from the list of primates classified as dangerous wild animals, and exempt owners of spider monkeys from the requirements for proper housing, care and safety of these dangerous animals. These changes are an unjustified step backward from the current law, therefore, this veto is in the interest of the public.

ITEM NUMBER 8

On page 2699, delete the boxed text.
On page 2700, delete the boxed text.

Nursing Facilities Additional Funding

H.B. 153 of the 129th General Assembly completed the transition from a cost-based Medicaid payment system for nursing facilities to a price-based system, a change that was initiated by the legislature in 2005 to reward efficiency. H.B. 153 established the current reimbursement methodology and related level of funding for nursing facility services. This item would modify that methodology and increase payments to nursing facilities, while no new data has been presented to justify those changes or demonstrate a need. This veto maintains current funding levels for nursing facility services and is therefore in the public interest.

ITEM NUMBER 9

On page 17, delete the following boxed text, "5164.78".
On page 30, delete the following boxed text, "5164.78".
On page 2621, delete the boxed text.

Higher Medicaid Rates for a Certain Clinic

This item codifies an enhanced payment rate for one provider in the Ohio Medicaid program. This limits the ability of the Medicaid Director to effectively and efficiently manage the program for the benefit of all Ohioans, including to reduce growth in spending and to modernize the Medicaid program, therefore, the veto of this item is in the public interest.

ITEM NUMBER 10

On page 17, delete the following boxed text, "5163.04".
On page 30, delete the following boxed text, "5163.04".
On page 2535, delete the boxed text.
On page 2536, delete the boxed text.

Prohibition on Extending Medicaid Coverage

This item would prohibit the Ohio Medicaid program from covering the group identified in 42 USC 1396a(a)(10)(A)(i)(VIII) (*i.e.*, all individuals who, as of January 1, 2014, are under 65 years of age, not pregnant, not entitled to or enrolled for benefits under Medicare Parts A or B, and whose income does not exceed 133 percent of the poverty line) which federal law mandates state Medicaid programs cover. This item also foregoes federal funding to cover 100 percent of the cost of coverage for this group in state fiscal years 2014 and 2015, resulting in significant

uncompensated care costs and the imposition of those costs onto Ohio businesses and citizens in the form of higher health insurance premiums. To give the Ohio General Assembly and the executive branch maximum flexibility on this issue, this veto is in the public interest.

ITEM NUMBER 11

On page 3067, delete the boxed text.
On page 3068, delete the boxed text.
On page 3069, delete the boxed text.
On page 3070, delete the boxed text.
On page 3077, delete the boxed text.
On page 3736, delete the boxed text beginning with "(A) The amendment or enactment..."

Sales Tax Collection on Internet Sales with Nexus to Ohio

This item attempts to mandatorily apply the collection of Ohio sales and use tax to transactions between out-of-state internet retailers and Ohio residents. Similar items enacted in other states have resulted in extensive litigation without necessarily producing an increase in state revenue. The federal government retains the right to regulate interstate commerce. Without the collection authority being clearly extended to the states for the purpose of out-of-state internet retailers, the legality of this item is uncertain and problematic. Congress must act before this policy change may become viable. Therefore, this veto is in the public interest.

ITEM NUMBER 12

On page 3038, delete the boxed text.
On page 3736, delete the following boxed text, "49(b) and" [Note: all of division (C) of Section 803.190 is boxed because of this line-item veto and the line-item veto of the text "and (54)" in Item 16 because if both "and (54)" and "(49)(b) and" are stricken from division (C), the remainder of division (C) would contain extraneous language that by itself would have no meaning.]

Aerospace Research and Development Sales Tax Exemption

This item expands an exemption that currently applies only to capitalized equipment to include all purchases of tangible personal property used in research and development of aerospace vehicles. This item has been vetoed in the past. The problems that existed with previous language remain unresolved. Although aerospace is a valued industry in Ohio, there is no justification for such a broad expansion of this exemption. Other industries conducting research and development enjoy no similar exemption for their non-capitalized items. Further, this expansion of the exemption is contrary to the policy of maintaining a broad sales tax base with as few exemptions as possible. Therefore, the veto of this item is in the public interest.

Relators' Exhibit C

Ohio House of Representatives Protest to Controlling
Board Authority to Appropriate ACA-Related Federal
Medicaid Funding

The concurrent resolution was adopted.

CLERK'S NOTATION

A PROTEST

We, the undersigned members of the Ohio House of Representatives, hereby protest the filing of a controlling board request by the Director of Medicaid, John McCarthy, seeking to appropriate additional funds specifically not appropriated in the prevailing appropriation act of the 130th General Assembly, Amended Substitute House Bill 59.

Specifically, the request seeks to expand Medicaid by making an "appropriation [that] would provide Medicaid coverage to adults without dependent children between 0%-138% of the Federal Poverty Level (FPL) and parents otherwise **not covered by current Medicaid eligibility levels** up to 138% FPL." (emphasis added). However, the request does not carry out the clear intent of the General Assembly as indicated in its passage of Am. Sub. House Bill 59 and should be denied.

Pursuant to R.C. 127.17, "[t]he controlling board shall take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the general assembly." In *State ex rel. Meshel v. Keip*, 66 Ohio St. 2d379 (1981), the Ohio Supreme Court applied R.C. 127.17 to declare a nullity an action by the Controlling Board that was contrary to the clear intent of the General Assembly.

Here, the clear intent of the Ohio General Assembly not to appropriate the funds contained in the request was expressed in its prevailing appropriation act, Am. Sub. HB 59:

- 1) The General Assembly included the following prohibition in Am. Sub HB 59: "The medicaid program **shall not cover** the group in the "Social Security Act," section 1902(a)(10)(A)(i)(VIII)." (emphasis added). The requested appropriation seeks "**to cover** individuals listed under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act" (emphasis added);
- 2) The General Assembly added over \$400M in additional Medicaid funding to Am. Sub. HB 59 as a result of removing from the budget the same appropriation currently being requested by the Director of Medicaid;
- 3) The General Assembly did not appropriate any funds "[t]o cover individuals listed under Section 1902(a)(10)(A)(i)(VIII) of the Social Security Act," even though estimated state costs to do so are \$13 to \$22M.

The Ohio Constitution grants legislative authority solely to the Ohio General Assembly, an authority which cannot be delegated. This request is thinly-veiled legislation creating new eligibility levels and funding levels for Medicaid. In fact, the request itself admits as much.

Our protest is not about the merits or lack of merit in expanding Medicaid. Our protest goes to the fundamental form of government upon which our country was founded—a Republic of checks and balances and separation of powers. The General Assembly is a co-equal branch of government that made its intent abundantly clear. The controlling board request attempts to subvert that intent, and is contrary to the Ohio Constitution and current statutory law. For all these reasons, we protest the filing of the above described controlling board request.

/s/WILLIAM G. BATCHELDER

William G. Batchelder, 69th District

/s/MATT HUFFMAN

Matt Huffman, 4th District

/s/JOHN ADAMS

John Adams, 85th District

/s/CHERYL L. GROSSMAN

Cheryl L. Grossman, 23rd District

/s/JIM BUCHY

Jim Buchy, 84th District

/s/LOU TERHAR

Lou Terhar, 30th District

/s/JIM BUTLER

Jim Butler, 41st District

/s/LOUIS W. BLESSING III

Louis W. Blessing III, 29th District

/s/KRISTINA ROEGNER

Kristina Roegner, 37th District

/s/MICHAEL E. HENNE

Michael E. Henne, 40th District

/s/TERRY BLAIR

Terry Blair, 42nd District

/s/WES RETHERFORD

Wes Retherford, 51st District

/s/MARGARET K. CONDITT

Margaret K. Conditt, 52nd District

/s/JOHN BECKER

John Becker, 65th District

/s/DOUG GREEN

Doug Green, 66th District

/s/MARGARET ANN RUHL
Margaret Ann Ruhl, 68th District

/s/BILL HAYES
Bill Hayes, 72nd District

/s/TONY BURKLEY
Tony Burkley, 82nd District

/s/ROBERT COLE SPRAGUE
Robert Cole Sprague, 83rd District

/s/ANDY THOMPSON
Andy Thompson, 95th District

/s/RON AMSTUTZ
Ron Amstutz, 1st District

/s/TIM DERICKSON
Tim Derickson, 53rd District

/s/RICK PERALES
Rick Perales, 73rd District

/s/TERRY BOOSE
Terry Boose, 58th District

/s/JEFFREY A. MCCLAIN
Jeffrey A. McClain, 87th District

/s/RONALD MAAG
Ronald Maag, 62nd District

/s/MARK ROMANCHUK
Mark Romanchuk, 2nd District

/s/PETER BECK
Peter Beck, 54th District

/s/CLIFF ROSENBERGER
Cliff Rosenberger, 91st District

/s/RON HOOD
Ron Hood, 78th District

/s/MATT LYNCH
Matt Lynch, 76th District

/s/CHRISTINA HAGAN
Christina Hagan, 50th District

/s/DAVE HALL
Dave Hall, 70th District

/s/ANDREW BRENNER
Andrew Brenner, 67th District

/s/MARILYN SLABY

Marilyn Slaby, 38th District

/s/PETER STAUTBERG

Peter Stautberg, 27th District

/s/REX DAMSCHRODER

Rex Damschroder, 88th District

/s/LYNN R. WACHTMANN

Lynn R. Wachtmann, 81st District

/s/RON YOUNG

Ron Young, 61st District

On motion of Representative Huffman, the House adjourned until Thursday, October 17, 2013 at 9:00 o'clock a.m.

Attest:

BRADLEY J. YOUNG,
Clerk.

OHIO

House

of

Representatives

JOURNAL

WEDNESDAY, OCTOBER 16, 2013