

IN THE SUPREME COURT OF OHIO

J. CRAIG SNODGRASS,
AUDITOR OF LORAIN COUNTY, OHIO, : Case No. 2023-0354
: :
Appellant, : On direct appeal from the
: Board of Tax Appeals
v. : :
: BTA Case Nos. 2022-1296, 2022-1247
PATRICIA HARRIS, :
TAX COMMISSIONER OF OHIO, et al., :
: :
Appellees. :

BRIEF BY AMICI CURIAE MARGARETTA LOCAL SCHOOL DISTRICT, PERKINS LOCAL SCHOOL DISTRICT, COLUMBIANA COUNTY AUDITOR NANCY MILLIKEN, ERIE COUNTY AUDITOR RICHARD H. JEFFREY, FULTON COUNTY AUDITOR BRETT J. KOLB, HENRY COUNTY AUDITOR ELIZABETH FRUCHEY, HURON COUNTY AUDITOR ROLAND J. TKACH, SANDUSKY COUNTY AUDITOR JERRI MILLER, STARK COUNTY AUDITOR ALAN C. HAROLD, AND WAYNE COUNTY AUDITOR JARRA L. UNDERWOOD IN SUPPORT OF APPELLEES PATRICIA HARRIS, TAX COMMISSIONER OF OHIO, AND NEXUS GAS TRANSMISSION, LLC

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INTRODUCTION

In 2018, Appellee Nexus Gas Transmission, LLC completed construction on a 256-mile natural-gas pipeline at a cost over \$1.4 billion. The Nexus Pipeline transports up to 1.5 billion cubic feet of natural gas each day across 13 counties and through 37 school districts in Northern Ohio. It is a big deal; and one of four large natural-gas pipelines found in the State. Unsurprisingly, these pipelines provide significant resources to (typically rural) political subdivisions and school districts in Ohio that are funded, in large part, by property taxes.

The county auditor for one of the 13 counties—Lorain County—through which the Nexus Pipeline runs has challenged the Board of Tax Appeals’ dismissal of his appeal of the property-tax valuation of the Nexus Pipeline. The actions of the Lorain County Auditor have significantly impacted the other 12 counties, the school districts, and other local governments located along the pipeline. This appeal has denied these political subdivisions, particularly schools, literally millions of dollars in property-tax distributions. It has led to halting the construction of schools. It has led to budget deficits. It wreaks havoc on local government and school districts across Northern Ohio.

Unlike the parties’ merit briefs, this brief filed by eight county auditors and three school districts will not dive into the deep-end of the legal issues presented to the Court. The parties have spent enough words on those arguments. Instead, this brief will look at the practical impact and the devastating effect this appeal has and will continue to have on the local governments and school districts in the pathway of the Nexus Pipeline.

The Lorain County Auditor’s appeal impacts political subdivisions and school districts in four ways. *First*, construction projects that are, in part, dependent upon the property-tax monies from the Nexus Pipeline have increased in cost because the projects have been delayed since the full Nexus Pipeline-tax money is tied up because of this appeal. *Second*, interest rates for financing those types of projects have increased because of the delay in those projects, causing political

subdivisions to incur additional debt-service expenses. *Third*, the operating budgets of political subdivisions—particularly school districts—sit in a deficit because the full value of the Nexus Pipeline-tax money has not been distributed. *Fourth*, local governments stand to be held hostage by a lone county auditor—in a county where they aren’t even located—that is permitted to appeal a settlement agreement entered into by the Tax Commissioner on behalf of the entire State and its political subdivisions.

Amici curiae Margareta Local School District, Perkins Local School District, Columbiana County Auditor Nancy Milliken, Erie County Auditor Richard H. Jeffrey, Fulton County Auditor Brett J. Kolb, Henry County Auditor Elizabeth Fruchey, Huron County Auditor Roland J. Tkach, Sandusky County Auditor Jerri Miller, Stark County Auditor Alan C. Harold, and Wayne County Auditor Jarra L. Underwood request that the Court affirm the decision of the Board of Tax Appeals—and quickly. This will ensure that the settlement agreement entered into by Nexus Gas Transmission and the Tax Commissioner (on behalf of the State and its political subdivisions) will provide certainty for local government and school district planning and budgeting. Amici curiae ask the Court to affirm the decision below.

STATEMENT OF INTEREST OF AMICI CURIAE

The ten amici curiae filing this brief in support of Appellees are a combination of school districts and county auditors located in jurisdictions through which the pipeline owned and installed by Nexus Gas Transmission, runs. Each of the amici curiae have been affected by this appeal; and if the Court overturns the decision by the Board of Tax Appeals would continue to be affected.

Margareta Local School District is located in Erie and Sandusky Counties and serves approximately 1,200 students. The Nexus Pipeline runs through the Margareta district boundaries. The decision by Auditor Snodgrass to appeal the BTA’s decision has caused and

continues to cause significant financial hardship to Margaretta. In fact, the District has paused construction of a brand-new school building because of the uncertainty created by the Lorain County Auditor's appeal.

Perkins Local School District is located in Erie County and serves approximately 1,900 students. The Nexus Pipeline runs through the Perkins district boundaries. The decision by Auditor Snodgrass to appeal the BTA's decision has caused and continues to cause significant financial hardship to Perkins. Perkins placed a bond issue on the May 2023 ballot for the construction of new schools, where it failed.

Nancy Milliken is the Auditor of Columbiana County. The Nexus Pipeline runs through Columbiana County. Auditor Milliken does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Columbiana County of the property-tax distributions they will receive.

Richard H. Jeffrey is the Auditor of Erie County. The Nexus Pipeline runs through Erie County. Auditor Jeffrey does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Erie County of the property-tax distributions they will receive.

Brett J. Kolb is the Auditor of Fulton County. The Nexus Pipeline runs through Fulton County. Auditor Kolb does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Fulton County of the property-tax distributions they will receive.

Elizabeth Fruchey is the Auditor of Henry County. The Nexus Pipeline runs through Henry County. Auditor Fruchey does not agree with Auditor Snodgrass's appeal of the BTA's decision

and wants to provide certainty to the political subdivisions located within Henry County of the property-tax distributions they will receive.

Roland J. Tkach is the Auditor of Huron County. The Nexus Pipeline runs through Huron County. Auditor Tkach does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Huron County of the property-tax distributions they will receive.

Jerri Miller is the Auditor of Sandusky County. The Nexus Pipeline runs through Sandusky County. Auditor Miller does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Sandusky County of the property-tax distributions they will receive.

Alan C. Harold is the Auditor of Stark County. The Nexus Pipeline runs through Stark County. Auditor Harold does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Stark County of the property-tax distributions they will receive.

Jarra L. Underwood is the Auditor of Wayne County. The Nexus Pipeline runs through Wayne County. Auditor Underwood does not agree with Auditor Snodgrass's appeal of the BTA's decision and wants to provide certainty to the political subdivisions located within Wayne County of the property-tax distributions they will receive.

This brief will refer to the ten amici curiae in support of Appellees as the "School District and County Auditor" amici curiae.

STATEMENT OF THE CASE AND FACTS

The School District and County Auditor amici curiae adopt the Statement of the Case and Facts set forth in the merit brief of Appellee Nexus Gas Transmission.

LAW AND ARGUMENT

The Lorain County Auditor raised five propositions of law in his direct appeal from the Board of Tax Appeals. The School District and County Auditor amici, however, are not directly responding to those five propositions of law, even though they do not believe there is merit to them. Instead, this brief will focus on the financial impact the Lorain County Auditor's appeal has had on the 12 other counties and the 37 school districts located along the Nexus Pipeline.

I. Construction project costs have increased and projects have been paused because of this appeal.

It is no secret that construction costs significantly increased because of the supply-chain issues stemming from the COVID-19 pandemic.¹ This is an unfortunate reality facing local governments and school districts as they explore and embark on construction projects. But for the 37 school districts and 12 other counties located along the Nexus Pipeline, the Lorain County Auditor's appeal is causing additional delays to construction projects that are leading to increased costs. That delay and those rising costs have led to the temporary abandonment of projects.

Margaretta Local School District in Erie and Sandusky Counties is a prime example. Margaretta's aging facilities require a new school to serve its students. The new preschool through 12th-grade building originally was going to cost \$39.8 million in 2020. While the Ohio Facilities Construction Commission was going to fund 38% of the project, the remainder was going to be funded by Margaretta taxpayers, including in part by the anticipated funds from the Nexus Pipeline property-tax settlement. The COVID-19 pandemic led to a delay in the project and an increase in the cost. In the fall of 2021, the project stood at \$57 million. And then this appeal came along.

¹ In February 2023, the overall cost of construction was 37.7% higher than it was in February 2020. See Archinect News, *Cost of construction materials remains 37% higher than pre-pandemic according to latest ABC analysis*, <https://archinect.com/news/article/150339906/cost-of-construction-materials-remains-37-higher-than-pre-pandemic-according-to-latest-abc-analysis> (accessed June 7, 2023).

Margaretta had to pause the project because of the uncertainty with how much money Margaretta would receive from Nexus Gas Transmission. *See Sandusky Register, Margaretta pauses construction project*, <https://sanduskyregister.com/news/429606/margaretta-pauses-construction-project/> (accessed June 7, 2023). The cost of the project is now nearly \$69 million; and there is no end in sight with rising costs. The delay created by the Lorain County Auditor's appeal is directly causing increased costs for the construction of Margaretta's new school.

Margaretta isn't the only school district that put a project on hold. Edison Local School District removed a bond issue for two new schools set to go on the ballot in November 2022 because the Lorain County Auditor appealed the Tax Commissioner's decision. Again, the uncertainty of the amount of property-tax monies flowing to Edison from the Nexus Pipeline led to the decision to pull the bond issue from the ballot. Perkins Local School District has also waited to place a bond issue for the construction of new buildings on the ballot because of the uncertainty of the monies to be received from the Nexus Pipeline. Both Edison and Perkins ultimately moved forward with putting the bond issues on the May 2023 ballot; both failed.

II. Interest rates for financing to complete projects have risen.

Similar to the delay causing an increase in the costs of construction, the Lorain County Auditor's appeal has led to an increase in interest rates on financing for projects. This, of course, also leads to an increase in costs to local governments.

For example, Margaretta planned to finance its local share of the new school project in a lease-purchase format under R.C. 3133.375. The \$62.9 million obligation would be publicly sold as certificates of participation (COPS) in the lease. The revenue stream to pay rent under the lease would be primarily from the Nexus Pipeline property-tax payments. But interest rates have risen significantly from the planned issuance of the COPS following the June 2022 settlement in this case. The cost to finance has also risen. A comparable school district transaction (Warrensville

Heights City School District COPS in Cuyahoga County) was sold in June 2022. Interest rates from that transaction provide an accurate depiction of the rates that Margaretta would have received had it been in the market at the same time. The delay has cost Margaretta's taxpayers more than \$7.6 million in debt service over the life of the planned COPS, which in present value terms equals more than \$4.5 million.

III. Operating budgets are in deficit because the full value of property-tax monies have not been distributed.

The 2023 fiscal year finished June 30. Unfortunately, this appeal wrecked the annual operating budgets for political subdivisions and school districts along the Nexus Pipeline. This damage to operating revenue occurred in three different ways.

First, Nexus Gas Transmission is making reduced property-tax payments until this appeal is resolved. This directly affects the local governments in all 13 counties along the Nexus Pipeline; it disproportionately impacts the 37 school districts located in those 13 counties which are, in large part, funded by property taxes. For example, under the settlement agreement between Nexus Gas Transmission and the Tax Commissioner, Margaretta would have received 58% of the original valuation determination for tax years 2019, 2020, 2021, and 2022. That would have been approximately \$5 million *annually*, excluding interest for underpayments, to Margaretta. The difference between what would have been the Nexus Gas Transmission settlement payments and the actual payments on the undisputed value is \$2.6 million, excluding interest. Instead, Margaretta's first-half tax settlement in 2023 was only 39.9% of the original valuation determination—a reduction of nearly \$1.4 million over the course of the year. This has led to Margaretta having a hovering deficit in its general fund for Fiscal Year 2023. Margaretta is not alone. The expectation of receiving the property-tax settlement for the original valuation

determination in the settlement agreement and then receiving significantly less has caused deficits across the region.

Second, local governments, but especially the 37 school districts, along the Nexus Pipeline appear richer than they really are. This impacts their distributions from the State through the School Foundation Program—which provides funds to school districts to aid in their day-to-day operations. For example, the Ohio Department of Education must assume that the full Nexus Pipeline valuation is part of the school district’s property wealth in its primary distribution formula. R.C. 3317.022. This is true even though the 37 school districts along the Nexus Pipeline have not received a distribution for the full valuation of the pipeline because of this appeal. So a school district is assumed to have more money than it actually received, resulting in a lower distribution from the State. While temporary-aid guarantees and other adjustments may soften the blow, the fact remains that school districts along the Nexus Pipeline have been short-changed in terms of their support from the State.

Third, school districts that have emergency levies (fixed-sum) under R.C. 5705.194 did not receive the entire property-tax settlement to which they were entitled. Ohio law requires that the millage to produce the fixed-dollar amount was set for all district taxpayers as if the Nexus Pipeline was fully valued. Again using Margaretta as an example, 42% of its emergency levy has been lost for fiscal year 2023. That equals \$200,000 annually. And it is lost forever; there is no mechanism in Ohio law to recover that loss.

IV. A single county auditor should not be able to hold up a statewide settlement.

Nexus Gas Transmission and the Tax Commissioner reached a settlement to resolve any dispute as to the valuation of the Nexus Pipeline. That settlement—\$950 million—was the result of months of negotiation back-and-forth between Nexus Gas Transmission and the Tax Commissioner. Like any settlement, it was a compromise by the parties that took into account

numerous things: the facts, expert valuations and reports, the legal issues, ending the legal proceedings, providing certainty and finality to the parties, and limiting legal fees.

The Tax Commissioner negotiated the settlement agreement on behalf of the State and its political subdivisions. *See* R.C. 5703.05(C). This authority makes sense, especially in this context. The Nexus Pipeline crosses through 13 different counties and 37 school districts. It is appropriate for the Tax Commissioner to take the interests of *all* of these political subdivisions—including the School District and County Auditor amici—and resolve the dispute on behalf of everyone. Otherwise, each local government and school district would be responsible for its *own* negotiation and settlement—an absurd outcome.

Perhaps most concerning is the appeal seeks to turn this concept on its head and set aside the *entire* \$950 million settlement to protect the interests of his 300,000 constituents. However, there are two million Ohioans that live in the other 12 counties along the Nexus Pipeline and what about their interests? This is causing financial issues for the political subdivisions along the Nexus Pipeline and it is undermining the very system the General Assembly created to resolve tax issues like this.

CONCLUSION

Amici curiae Margareta Local School District, Perkins Local School District, Columbiana County Auditor Nany Milliken, Erie County Auditor Richard H. Jeffrey, Fulton County Auditor Brett J. Kolb, Henry County Auditor Elizabeth Fruchey, Huron County Auditor Roland J. Tkach, Sandusky County Auditor Jerri Miller, Stark County Auditor Alan C. Harold, and Wayne County Auditor Jarra L. Underwood respectfully request that this Court affirm the decision of the Board of Tax Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent email transmission this 30th day of June, 2023 to the following:

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