

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, *ex rel.* CITY OF
OBETZ,

Relator,

v.

MICHAEL STINZIANO, FRANKLIN
COUNTY AUDITOR, and

CHERYL BROOKS SULLIVAN,
FRANKLIN COUNTY TREASURER,

Respondents.

Case No. 23-0610

Original Action in Mandamus
and Writ of Prohibition

**BRIEF OF AMICUS CURIAE FRANKLIN COUNTY BOARD OF COMMISSIONERS,
THE COLUMBUS PUBLIC LIBRARY, COLUMBUS AND FRANKLIN COUNTY
METROPOLITAN PARK DISTRICT, THE COLUMBUS ZOOLOGICAL PARK
ASSOCIATION, AND HAMILTON TOWNSHIP, IN SUPPORT OF RESPONDENTS
AND URGING DISMISSAL OF VERIFIED COMPLAINT**

O. Judson Scheaf III (0040285)
* *Counsel of Record*
O.J. SCHEAF & ASSOCIATES LLC
4524 Hudson Drive
Stow, Ohio 44224
(614) 657-8010
jud@scheaf-law.com
Counsel for Relator

G. GARY TYACK
Prosecuting Attorney
Franklin County, Ohio
Charles Reginald Ellis (0090492)
Assistant Prosecuting Attorney
* *Counsel of Record*
Mary Elizabeth Johnson (0037623)
Assistant Prosecuting Attorney
373 South High Street, 17th Floor
Columbus, Ohio 43215
(614) 525-7437
cellis@franklincountyohio.gov
mjohnson@franklincountyohio.gov
Counsel for Respondents

Justin W. Ristau (0075222)
Special Counsel for Respondents
Bricker Graydon LLP
100 South Third Street
Columbus, Ohio 43215-4291
614-227-2300
jristau@brickergraydon.com
Special Counsel for Respondents

Peter N. Griggs, Member (0073819)
** Counsel of Record*
Brosius, Johnson & Griggs, LLC
1600 Dublin Road, Suite 100
Columbus, Ohio 43215
Telephone: (614) 464-3563
pgriggs@bjglaw.net
Counsel for Hamilton Township

G. GARY TYACK
Prosecuting Attorney
Franklin County, Ohio
Charles Reginald Ellis (0090492)
Assistant Prosecuting Attorney
** Counsel of Record*
Mary Elizabeth Johnson (0037623)
Assistant Prosecuting Attorney
373 South High Street, 17th Floor
Columbus, Ohio 43215
(614) 525-7437
cellis@franklincountyohio.gov
mjohanson@franklincountyohio.gov
*Counsel for Franklin County Board
of Commissioners, the Columbus
Public Library, and the Columbus
and Franklin County Metropolitan
Park District*

Fred G. Pressley (0023090)
** Counsel of Record*
Porter Wright Morris & Arthur LLP
41 South High Street, Suites 2800 –
3200
Columbus, OH 43215
614-227-2233
FPressley@porterwright.com
*Counsel for The Columbus
Zoological Park Association*

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INTRODUCTION

Now come Amicus Curiae, the Franklin County Board of Commissioners, the Columbus Public Library, Columbus and Franklin County Metropolitan Park District, The Columbus Zoological Park Association, and Hamilton Township (collectively, “Amicus”), and hereby respectfully submit this Brief in support of Respondents and urging denial of Relator’s request for a writ of mandamus and a writ of prohibition.

STATEMENT OF INTEREST OF AMICUS CURIAE

Franklin County Board of Commissioners is the budget and appropriating authority for Franklin County, Ohio government and includes all county agencies. Franklin County Board of Commissioners acts pursuant to its statutory authority as provided by Ohio Revised Code, Title 3 and Title 57, and has an interest in the taxes levied to support county agencies, including the county general fund, Franklin County Children Services, the Alcohol Drug and Mental Health Board of Franklin County, Franklin County Board of Developmental Disabilities, and the Franklin County Office on Aging (collectively, the “FCBOC Taxing Districts”). Franklin County Board of Commissioners, for the benefit of the FCBOC Taxing Districts, and the other Amicus have a direct financial interest in the real property taxes which were erroneously apportioned as overdistributions to Relator for tax years 1999 through 2016.

In this case, due to various errors in the apportionment of real property taxes for tax years 1999 through 2016, Relator received \$2,522,003.98 in tax revenues, to which it was never entitled. Amicus should have received their proportionate share of those revenues, but did not. Although Relator now admits that “a reckoning of TIF service payments between Obetz and the affected taxing districts” is in order (Relator’s Merit Brief, p. 1), Relator has made no reasonable

effort to voluntarily repay these amounts or negotiate a settlement to provide for repayment of this obligation over time.¹

Given the tight budget constraints facing local governments, the lost revenues have had a material impact on the operations of Amicus. These important governmental functions have been denied the benefit of tax revenues to which they are entitled. Conversely, Relator has reaped the benefit of a massive windfall of more than \$2.5M at Amicus' expense. Yet, Relator callously insisted that it had no duty or intention of voluntarily paying back the overdistributions. Instead, Relator drug its feet and offered unworkable and illegal settlement proposals.

After more than a year of failed negotiations, the Auditor determined that the parties were at impasse and that a voluntary settlement was not achievable. Based on this determination and in connection with the real property tax settlement for the first half of tax year 2022, the Auditor began the process of correcting these errors, and withheld distribution of \$194,944.32 in tax revenues that would otherwise have been distributable to Relator. Next, pursuant to R.C. 319.44, the Auditor disbursed these tax revenues to Amicus and the other affected taxing districts to partially correct the overdistribution.

Now, Relator is attempting to recover the tax revenues that were distributed to Amicus and the other taxing districts in connection with the First Half TY 2022 Settlement. Specifically, Relator filed the Verified Complaint, seeking writ of mandamus ordering Respondents to: (1) return the \$212,96.01 in Goodyear TIF Funds voluntarily paid by Relator to the County, (2) reallocate to Relator the \$194,944.32 in tax revenues that have already been distributed to other taxing districts in connection with the First Half TY 2022 Settlement, and (3) disburse tax

¹ Although Relator repaid \$212,963.01 of the total windfall to Auditor for redistribution, Relator now seeks to claw back that voluntary payment.

revenues from future settlements of real property taxes to Relator, without set-off or correction of the overdistributions that occurred in previous settlements. In addition, the Verified Complaint sought a writ of prohibition preventing Respondents from withholding taxes otherwise owed to Relator at future real estate settlements.

The consequences of these proposed remedies are not academic. Rather, every dollar “returned” or “reallocated” back to Relator would necessarily have to come from somewhere. The apportionment of real property tax revenues is a zero-sum game. If an order is entered that allows Relator to retain the massive windfall of overdistributions (which Relator admits it was never entitled to receive), the necessary consequence is that Amicus will suffer a corresponding loss of moneys to which they are entitled.

Amicus submits this brief to highlight the financial consequences of Relator’s proposed remedies, and to urge denial of the requested writ of mandamus and writ of prohibition.

STATEMENT OF FACTS

Amicus incorporate by reference the Statement of Facts set forth in Respondents’ Merit Brief.

LAW AND ARGUMENT

Amicus further incorporates and endorses the Law and Argument set forth in Respondents’ Merit Brief. In addition to the arguments advanced by Respondents, Amicus presents the following:

Through the Verified Complaint, Relator requests, among other things, a writ of mandamus ordering Respondents to reallocate to Relator the \$194,944.32 in tax revenues that have already been distributed to other taxing districts in connection with the First Half TY 2022 Settlement. However, based on the undisputed facts, the First Half TY 2022 Settlement has

already been completed, and taxes have already been apportioned in the amounts determined by the Auditor to be due and owing to Amicus.

Therefore, even if Relator is correct that the Auditor exceeded its statutory authority (which Amicus denies for the reasons set forth in Respondents' Merit Brief), Relator is in no different position than Amicus. Relator argues (incorrectly) that the Auditor exceeded its statutory authority by distributing the revenues to the taxing districts. But Relator seems blind to the fact that Amicus suffered a much worse injury than that of which Relator currently complains. As indisputably established through Respondents' Evidence, the Amicus should have received certain tax revenues from the settlements for tax years 1999 through 2016. Due to errors in the apportionment of taxes during these previous settlements, Amicus did not receive those revenues. Instead, Relator received overdistributions in the amount of \$2,522,003.98.

Therefore, to the extent Relator has a claim in mandamus to "reallocate" the 2022 distribution, Amicus would similarly have a claim in mandamus to reallocate the 1999 through 2016 distributions.

In other words, errors in the distribution of tax revenues have been made throughout the history of the Goodyear TIF, all to the direct disadvantage of Amicus. This Court should not exercise its original jurisdiction to fashion an extraordinary remedy to correct one discrete error in the long history of errors. Rather, this Court should recognize the Auditor's plenary power, and duty, to correct those errors that occurred during the settlements of real property taxes for tax years 1999 through 2016. To the extent Relator is dissatisfied with the corrections made by the Auditor, Relator can pursue an unjust enrichment claim.²

² In another glaring contradiction, Relator argues that Amicus can be fully compensated through an unjust enrichment claim, while at the same time arguing that it has "no adequate remedy at law."

To the extent this Court determines that a writ of mandamus or a writ of prohibition is appropriate (which it should not), the writ should be structured to address the entire history of errors and reallocate all overdistributions since tax year 1999 to affected taxing districts that were legally entitled to the revenues. Any writ or other extraordinary remedy that is entered, without acknowledging the harm caused to each of the affected taxing districts since 1999, will only exacerbate the problem and lead to further confusion and harm.

Respectfully submitted,

/s/ Charles Reginald Ellis

G. GARY TYACK
Prosecuting Attorney

Franklin County, Ohio
Charles Reginald Ellis (0090492)
Assistant Prosecuting Attorney
** Counsel of Record*
Mary Elizabeth Johnson (0037623)
Assistant Prosecuting Attorney
373 South High Street, 17th Floor
Columbus, Ohio 43215
(614) 525-7437
cellis@franklincountyohio.gov
mjohanson@franklincountyohio.gov
*Counsel for Franklin County Board of
Commissioners, the Columbus Public Library, and
the Columbus and Franklin County Metropolitan
Park District*

/s/ Peter N. Griggs

Per written authority dated 12/6/23
Peter N. Griggs, Member (0073819)
Brosius, Johnson & Griggs, LLC
1600 Dublin Road, Suite 100
Columbus, Ohio 43215
Telephone: (614) 464-3563
pgriggs@bjglaw.net
Counsel for Hamilton Township

/s/ Fred G. Pressley
Per written authority dated 12/7/23
Fred G. Pressley (0023090)
Porter Wright Morris & Arthur LLP
41 South High Street, Suites 2800 – 3200
Columbus, OH 43215
614-227-2233
FPressley@porterwright.com
*Counsel for The Columbus Zoological Park
Association*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **BRIEF OF AMICUS CURIAE FRANKLIN COUNTY BOARD OF COMMISSIONERS, THE COLUMBUS PUBLIC LIBRARY, COLUMBUS AND FRANKLIN COUNTY METROPOLITAN PARK DISTRICT, THE COLUMBUS ZOOLOGICAL PARK ASSOCIATION, AND HAMILTON TOWNSHIP, IN SUPPORT OF RESPONDENTS AND URGING DISMISSAL OF VERIFIED COMPLAINT** was served upon the following party by email as indicated below, this 8th day of December, 2023:

O. Judson Scheaf III, Esq.
jud@scheaf-law.com
Counsel for Relator

Justin W. Ristau
jristau@brickergraydon.com
Special Counsel for Respondents

Mary Elizabeth Johnson
mjohnson@franklincountyohio.gov
Counsel for Respondents

Peter N. Griggs
pgriggs@bjglaw.net
Counsel for Hamilton Township

Fred G. Pressley
FPressley@porterwright.com
Counsel for The Columbus Zoological Park Association

/s/ Charles Reginald Ellis
G. GARY TYACK
Prosecuting Attorney
Franklin County, Ohio
Charles Reginald Ellis (0090492)
Assistant Prosecuting Attorney