[Cite as *Brinkman v. Miami Univ.*, 139 Ohio Misc.2d 114, 2005-Ohio-7161.]

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

Brinkman, Plaintiff,	:	CASE NO. CV 2005-11-3736
v.	:	Judge Charles L. Pater
Miami University et al., Defendants.	:	Order Granting Summary Judgment to Defendants due to Plaintiff's Lack of Standing
		FINAL APPEALABLE ORDER
		11/22/05

Langdon & Hartman, L.L.C., and David R. Langdon, for plaintiff.

Porter Wright Morris & Arthur, L.L.P., and Kathleen Trafford, for defendant.

PATER, Judge.

{¶1} "The presence of a disagreement, however sharp and acrimonious it may be, is insufficient to create an actual controversy if the parties to the action do not have adverse legal interests." *State ex rel. Barclays Bank P.L.C. v. Hamilton Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 536, 660 N.E.2d 458, paragraph one of the syllabus. Plaintiff, Thomas Brinkman, a taxpayer and citizen, disagrees sharply with the defendant, Miami University, an instrumentality of the state, regarding its provision of medical-insurance benefits to those it classifies as same-sex domestic partners of its employees. Brinkman maintains that Miami's policy violates the Ohio

Brinkman maintains that Miami's policy violates the Ohio Constitution. Arguably Brinkman is correct, but he lacks the requisite, adverse legal interest in the dispute. As a taxpayer, Brinkman fails to establish standing in that he is not a member of a special class that has funded the questioned expenditures, nor has he been damaged individually and concretely. As a citizen, Brinkman fails to establish public-rights standing because this type of standing is available only to those seeking extraordinary writs. Consequently, he does not have standing to sue, and judgment is rendered for Miami.

Procedural Posture

{¶2} Brinkman, in his capacity as taxpayer, citizen, and tuition payer, sued Miami University, along with those who make and administer its policies. He asked for a declaration that Miami's provision of domestic-partner benefits violates Ohio's Constitution and for an injunction against the continuation of the practice.

{¶3} Two of Miami's faculty members, with their same-sex domestic partners, intervened as additional defendants. The intervening defendants filed a motion for summary judgment, asserting that Brinkman lacked standing to sue. In his response, Brinkman abandoned his payment of tuition as a basis for standing. He proceeded only as a citizen and taxpayer. The motion has been fully briefed, and oral arguments have been heard. The order rendered here relates only to Brinkman's lack of standing as taxpayer and citizen in the context of an action in common pleas court for declaratory judgment and injunctive relief. The order should not be construed to suggest that no one can challenge the practice at issue in the court of common pleas. Likewise, it should not be read as prohibiting someone in Brinkman's situation from maintaining a different type of action, perhaps in a different court.

Background

{¶4} In recent years, our nation has engaged in significant debate on the topic of whether same-sex couples should be allowed to marry and/or whether their relationships should be afforded the same rights, privileges, immunities, and obligations as those possessed by married couples. A few years ago, the Supreme Court of Massachusetts declared unconstitutional laws by which same-sex couples were excluded from having rights associated with married couples. *Goodridge v. Mass. Dept. of Pub. Health* (2003), 440 Mass. 309, 798 N.E.2d 941. Recently, the Supreme Court of New Jersey ruled in a similar fashion. *Lewis v. Harris* (2006), 188 N.J. 415, 908 A.2d 196. In response to this trend, some states have taken action to move in the direction suggested by the Massachusetts and New Jersey Supreme Courts, while others have attempted to shore up traditional customs.

{¶5} In 2004, the people of Ohio and their representatives responded in several ways. In May, the legislature encoded what were regarded as already existing principles of the common law of Ohio relating to the qualifications of persons who can marry. The following language was added to Section 3101.01 of the Ohio Revised Code: "A marriage may only be entered into by one man and one woman." R.C. 3101.01(A). "Any marriage between persons of the same sex is against the strong public policy of this state. Any marriage between persons of the same sex shall have no legal force or effect in this state and, if attempted to be entered into in this state, is void ab initio and shall not be recognized by this state." R.C. 3101.01(C)(1). "Any marriage entered into by persons of the same sex in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state." 3101.01(C)(2). These code sections were likely viewed as a safeguard against the possibility of Ohio's judges' "creation" of new law.

{¶6} Many Ohioans believed that even stronger safeguards were warranted. In November of that year, the people of Ohio adopted a constitutional amendment. It reads: "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage." Section 11, Article XV, Ohio Constitution.

{¶7} The trustees and the administrators of Miami University were grappling with the same issues. They may have concluded that declining to grant medical-insurance benefits to same-sex, committed domestic partners of employees was fundamentally unfair when the university granted that coverage to the spouses of employees. Certainly Miami's policy makers concluded that they would have a more difficult time attracting employees if the university declined to give medical-insurance benefits to the same-sex domestic partners of its employees.

{¶8} In July 2004, Miami University began providing medical-insurance benefits to same-sex domestic partners of employees. In order for an employee's same-sex cohabitant to qualify for coverage, the employee must swear and affirm that the two of them:

1. share a residence;
2. are in a long-term committed relationship and have been in this relationship for at least six months;
3. are of the same sex, are each other's sole domestic partner, and intend to remain so indefinitely;
4. are responsible for each other's common welfare;

5. are at least eighteen years of age;

6. are not legally married to anyone;

7. are not related by blood closer than would bar marriage in the state of Ohio;

8. are mentally competent to consent to contract; and

9. share financial obligations, as demonstrated by at least two of the following conditions: joint ownership of a residence; joint ownership of a motor vehicle, checking account, credit account, or lease; and designation of the domestic partner as the primary beneficiary of a will or life insurance policy.

Facts Significant to the Motion

{¶9} Other than the general background, the only significant fact is that Brinkman is a taxpayer and an elector, or citizen. In his complaint, Brinkman, as a parent of a Miami student, described himself as a tuition payer, but in his deposition, he discounted the significance of that fact. Then, when he responded to the motion for summary judgment, Brinkman never even addressed the fact that he was a payer of tuition. Consequently, we conclude that he has abandoned this potential basis of his standing. See Civ.R. 56(E) and cases thereunder. Because Brinkman ignored the paying of tuition as a basis for standing when he responded to the motion, the court's decision is based solely on his status as a taxpayer and citizen. This order should not be construed to stand for the proposition that one who pays tuition to a state university would have no standing to pursue this kind of complaint.

{¶10} A factual issue that did not need to be resolved but which was addressed at length was the question of the source of the money used to pay for the medical-insurance premiums for the employees' same-sex domestic partners. In general, the money used to make these payments comes out of an account that is a mixture of money received from taxes, unrestricted gifts, and

taxes, unrestricted gifts, and perhaps other sources. At the end of Miami's fiscal year, certain reconciling accounting entries are made on the university's books. The purpose of these entries is to attribute the payment of certain kinds of expenses to certain kinds of receipts. At the end of the 2004-2005 school year (fiscal year 2005), no reconciling entry was made concerning the expenditures at issue. Therefore, it must be concluded that tax money was used for the payment of the medical-insurance premiums for that year. During the next school year, the university's trustees adopted the policy that the university would make an accounting entry at the end of each fiscal year by which the payment of the medical-insurance premiums at issue for the previous year would be attributed to a fund comprised only of money received from unrestricted gifts. At the time of the depositions taken in this case, that kind of reconciling accounting entry had not been made on the books for the 2005-2006 school year, but presumably, it has now taken place.

{¶11} The parties have argued extensively about whether tax money was used to make the payments at issue. For the purpose of this motion, the money's source makes no difference. Brinkman lacks standing either way. Assuming arguendo that the expended funds came from taxes, the court finds that Brinkman has failed to show any damages to himself different from those sustained by the public in general. Given the absence of individual, concrete damages, the court holds that the origin or the characterization of the expended funds makes no difference.

{¶12} Parenthetically, however, to focus on whether the money was tax money or donated money frames the question too narrowly. The funds in question were spent by an instrumentality of the state to pay for general operational expenses. To classify this money as anything but public funds is suspect, and certainly, the state should not skirt constitutional restraints by clever accounting practices. Regardless of the money's origins, the entity spending the funds is the state

the entity spending the funds is the state of Ohio, and the purpose for the expenditures is the payment of public employees' fringe benefits: part of the salary that public employees receive for carrying out the public purpose of providing postsecondary education to the people of Ohio.

Discussion of Law of Standing

{¶13} "The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law." Section 4(B), Article IV, Ohio Constitution. Declaratory judgments and injunctions, the kinds of court orders sought by Brinkman, are matters over which the court of common pleas frequently exercises jurisdiction. In order for a matter to be justiciable, however, there needs to be more than just subject-matter jurisdiction. The parties must have standing. *State ex rel. Dunn v. Taft* (2006), 110 Ohio St.3d 252. The fundamental question here is whether Brinkman, a taxpaying citizen without individual, concrete damages, has standing to attack the constitutionality of an action of Miami, an instrumentality of the state.[1]

{¶14} Generally, in order for a taxpayer/citizen to have standing to sue the state or an instrumentality of it, such as a public university, on constitutional grounds, either he must have individual damages or the case must be appropriate for the court to bestow public-rights standing. In this case, Brinkman maintains that he has been damaged individually, but that even if such damages cannot be shown, the court should grant him, as a citizen representative of all Ohioans,

[1] In R.C. 3345.011.1 Miami University is identified as a "state university," which is "a public institution of higher education which is a body politic and corporate." In case law, state universities are described as instrumentalities or arms of the state, as distinguished from subdivisions of the state, such as counties and municipalities. See *Collins v. Univ. of Cincinnati* (1981), 3 Ohio App.3d 183, 444 N.E.2d 459; *Daniel v. American Bd. of Emergency Medicine* (W.D.N.Y. 1998), 988 F. Supp. 127; *Dillion v. Univ. Hosp.* (S.D.Ohio 1989), 715 F. Supp. 1384; *Hall v. Med. College of Ohio at Toledo* (C.A.6, 1984), 742 F.2d 299; and *Bailey v. Ohio State Univ.* (S.D.Ohio 1980), 487 F. Supp. 601.

a citizen representative of all Ohioans, public-rights standing based on the significant issue at stake.

{¶15} The court concludes that Brinkman has not shown the kind of individual, concrete damages required to have taxpayer standing, nor can those damages be presumed. The court also concludes that it cannot grant Brinkman public-rights standing because this special type of standing is reserved for extraordinary writs, and he did not request one.

{¶16} Holding No. 1: Brinkman does not have standing as a taxpayer because he cannot show either that he is a member of a special class that has contributed the funds being expended unconstitutionally, or that he has been damaged by the state's unconstitutional expenditures in a manner or degree different from that suffered by the general public.

{¶17} "It is a general rule that a person has no standing to attack the constitutionality of a law [or by logical extension, to attack the constitutionality of an action taken by a state university] unless he or she has an interest in it and that the individual comes within its purview. It is a firmly established principle that an individual who is not affected or prejudiced by the enforcement of an act [or by the implementation of an action of the state university] may not question its constitutionality. In other words, the constitutionality of a statute [or of a state university's action] may not be brought into question by one who is not within the class against whom the operation of the statute [or the implementation of the action of the state university] is alleged to have been unconstitutionally applied and who has not been injured by its alleged unconstitutional provision. Thus, to have standing to attack the constitutionality of a legislative enactment [or of an action of a state university], a private litigant must generally show that he or she has suffered or is threatened

has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law [or action] in question has caused the injury, and that the relief requested will redress the injury." (Footnotes omitted.) 16 Ohio Jurisprudence 3d (2001) 248, Constitutional Law, Section 115.

{¶18} The general rule of taxpayer standing based on individual damages is stated clearly in the above quotation from Ohio Jurisprudence. It is stated more fully, but with less clarity, in *State ex rel. Masterson v. State Racing Comm*. (1954), 162 Ohio St. 366, 123 N.E.2d 1. The general rule is really two rules, or at least two statements of principle. What makes the rule difficult to comprehend is that at first blush, its two components appear to be at odds with each other. The two principles are as follows.

{¶19} " 'Even in the absence of legislation, a taxpayer has a right to call upon a court of equity to interfere to prevent the consummation of a wrong such as occurs when public officers attempt to make an illegal expenditure of public money, or to create an illegal debt, which he, in common with other property holders of the taxing district, may otherwise be compelled to pay.'

{¶20} "It is equally fundamental that at common law and apart from statute, a taxpayer can not bring an action to prevent the carrying out of a public contract or the expenditure of public funds unless he has some special interest therein by reason of which his own property rights are put in jeopardy. In other words, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally." (Citations omitted.) *Masterson,* 162 Ohio St. at 368. 123 N.E.2d 1.

{¶21} The two paragraphs of the general rule, read in a vacuum, seem to be at odds with each other. The first paragraph seems to support Brinkman's standing, assuming arguendo that

assuming arguendo that public funds are involved in the expenditures at issue, while paragraph two apparently disallows standing.

{¶22} Proper case-law construction requires harmonizing the two paragraphs in a rational fashion, giving meaning to both, not giving preference to one and ignoring the other. A rational way, and the best way, as this court analyzes it, to give meaning to both paragraphs and to read them consistently with each other is to integrate the underlying facts of the case into paragraph one and to allow paragraph two to stand unqualified.

{¶23} In *Masterson,* the public funds involved were fees and taxes collected by the secretary for the State Racing Commission from a "special class of taxpayers," presumably those involved in the business being regulated. See *Masterson,* 162 Ohio St. at 369, 123 N.E.2d 1. The relator, Masterson, was a taxpayer, but he had not paid any fees or any of the special taxes that made up the State Racing Commission Fund. Thus, he lacked standing to sue. Applying these facts to paragraph one of the general rule narrows the rule to a proposition that a member of a special class of taxpayers has standing to sue the state regarding its unconstitutional expenditure of the funds that are the contributions of the special class, without the plaintiff's needing to show individual damages. Individual damages are still required, but their existence is presumed by the plaintiff's membership in the special class of contributors.

{¶24} This interpretation of paragraph one produces the following synthesis of the two paragraphs. When a taxpayer wants to sue the state for the unconstitutional expenditure of public funds, he may establish standing in two ways. First, he has standing if he is in a particular class of people, more narrow than the class of taxpayers generally, that has contributed the funds out of which the expenditures are made. Second, even if he is not in such a narrow class, he has standing as a general taxpayer if he has suffered some individual injury — if he can "allege and

some individual injury — if he can "allege and prove damage to [himself] different in character from that sustained by the public generally." *Masterson,* 162 Ohio St. at 368, 123 N.E.2d 1. If he can establish neither basis for standing, he cannot sue.

{¶25} In this case, Brinkman does not allege that the expenditures in question come from specific funds contributed by a special class to which he belongs. In fact, he argues for the opposite proposition, that the expenditures were made from funds made up partially of general tax revenues. Miami and the intervenors argue just as strenuously that the expenditures, at least for the past school year and for all succeeding school years, have come, are coming, and will come exclusively from unrestricted gifts made to the university.

{¶26} Assuming the correctness of Brinkman's view of the funds spent, he lacks standing to sue under *Masterson*. Brinkman neither belongs to any special class of taxpayers who can be presumed to have suffered individual, concrete damages, nor does he allege that type of damages.

{¶27} Holding No. 2: Brinkman does not have public-rights standing because this type of standing is bestowed only when the petitioner is seeking the extraordinary remedy of a peremptory writ, and only where the desired governmental action, or prohibition of action, is of significant, public importance, whereas in this case, even though the issue is one of significance to the public, Brinkman has sought the ordinary remedy of declaratory and injunctive relief.

{¶28} There is an exception to the general rule of taxpayer standing as set forth in *Masterson*. If one lacks taxpayer standing, he may have public-rights standing, but to warrant the granting of this type of standing, the case must be an extraordinary one. The rule for public-rights standing is set forth in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

{¶29} Paragraph one of the syllabus reads, "Where the object of an action in mandamus and/or prohibition is to procure the enforcement or protection of a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that the relator is an Ohio citizen and, as such, interested in the execution of the laws of this state."

{¶30} Striking in that part of the syllabus is the setting in which public-rights standing exists. A court will recognize such standing when a citizen seeks a peremptory writ, either mandating the executive branch of government to carry out a constitutional duty, or proscribing the judiciary from engaging in some unconstitutional action. On its face, the holding in *Ohio Academy of Trial Lawyers* does not apply to an action for declaratory judgment or injunctive relief in common pleas court.

{¶31} Brinkman argues for the extension of public-rights standing. He suggests that the same rationale that makes public-rights standing appropriate for obtaining an extraordinary writ from the court of final resort applies equally to actions in the trial court. His argument is unpersuasive.

{¶32} This court can find only one case in published Ohio law standing for the proposition that a plaintiff has public-rights standing in a court of common pleas to seek declaratory judgment and injunctive relief against the government. That case is *Ohio Roundtable v. Taft*, 119 Ohio Misc.2d 49, 2002-Ohio-3669, 773 N.E.2d 1113. This court cannot agree with that court's expansion of public-rights standing to the common pleas court in ordinary actions.

{¶33} The plaintiffs there requested mandamus, as well as declaratory and injunctive relief. Id. at ¶ 4-6. The requests for writs of mandamus were denied on the basis of the plaintiffs' having had an adequate remedy at law through the desired declaratory judgments and injunctions. Id. at

declaratory judgments and injunctions. Id. at ¶ 71. Because that case proceeded only as an action for declaratory judgment and injunction, the holding concerning public-rights standing must be understood as applying to actions in common pleas court for declaratory and injunctive relief, unaccompanied by any request for a peremptory writ.

{¶34} In addressing the standing issue, that court cited several sources, including cases from multiple jurisdictions, law journal articles, and condensations of general law in Ohio Jurisprudence and American Jurisprudence. What was not addressed, however, was the setting of the cited comments and holdings. For example, when that court quoted the following statement, "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," no importance was attributed to the fact that the court making that statement was the Ohio Supreme Court or that the form of action being addressed was mandamus. *Ohio Roundtable,* 119 Ohio Misc.2d 49, 2002-Ohio-3669, 773 N.E.2d 1113, ¶ 36, quoting 59 American Jurisprudence 2d (1987) 415, Parties, Section 30. That court treated the pronouncements of the Supreme Courts of New Mexico and Utah the same way. See at ¶ 43. In each of those cases, it was a state's supreme court speaking, and it was a state's supreme court, by exception, granting standing to a party so that the supreme court would have a vehicle through which to pronounce on a significant public issue. The rationale given by supreme courts for carving out an exception to the rules of standing regarding actions requesting extraordinary writs coming directly to those courts does not necessarily apply to trial courts.

{¶35} The fact that the Ohio Supreme Court has the discretion to grant public-rights standing in extraordinary cases of important societal issues in actions brought directly to that court

that court does not mean that the Supreme Court has shared or intends to share this discretion with the trial courts of the state. Indeed, it seems reasonable that no trial court should extend its jurisdiction to encompass such weighty societal and political matters through an expansion of the exception to the general rules of standing without permission from the Supreme Court to do so. Regarding this issue, we have no indication from the Supreme Court that the trial courts should expand their rules of standing similarly. In fact we have reason to believe that if the current Supreme Court were to revisit the standing issues raised in *Ohio Academy of Trial Lawyers*, the concept of public-rights standing would be constricted, not broadened. For these reasons, this court believes that it lacks the discretion to grant standing to Brinkman in order to rule on the important constitutional issues raised in the complaint.

Does Brinkman Have Recourse?

{¶36} Constitutions are declarations of broad, fundamental principles of duties and limitations of government, of individual rights, and of law in general. Therefore, they should be construed broadly, at least in the sense that their contents must be treated with respect and allowed to function as what they are, fundamental principles with which the state's actions must conform. Constitutional provisions are not to be treated as outmoded statutes whose provisions are interpreted in a constricted manner so as to give those laws minimal effect. See, generally, 16 American Jurisprudence 2d, Constitutional Law, Section 60.

{¶37} Ohio has recently amended its constitution, seemingly to make explicit what has always been understood to be inherent in the common law of Ohio. Marriage can exist only when the spouses are husband and wife, male and female. Furthermore the state is prohibited from granting marital-type significance to a relationship between unmarried persons.

{¶38} Arguably, the state of Ohio, through its instrumentality or arm, Miami University, has done that which is constitutionally proscribed. It has seemingly created a category of persons, same-sex domestic partners of its employees, to whom the state extends the same kind of medical-insurance benefits, and perhaps other benefits, that the state has traditionally reserved for spouses of employees. It is obvious that in order for the same-sex domestic partners of employees to qualify for benefits, the relationship between the cohabiting persons must be virtually the same as that of spouses.

{¶39} Presumably sensing that its policy was, or might be construed as being, contrary to the constitution, after the first year of its implementation, the university specified that it would not use tax dollars to fund the benefits in question. A reasonable inference from this change in accounting procedure would be that the state hoped that what it arguably was prohibited from doing with tax money, it could legally do with unrestricted gifts.

{¶40} The preliminary, substantive question in this case, had it gotten past the roadblock of absence of standing, is whether a state university's provision of fringe benefits to same-sex, unmarried cohabitants of its employees comports with the marriage-protection amendment to the Ohio Constitution. The equally important underlying issue is whether the marriage-protection amendment is at odds with other parts of the state constitution that protect individual rights or is in conflict with similar provisions of the United States Constitution. Is this a question suitable for adjudication, or is it an issue that is purely political? When the state arguably transgresses the Constitution and bestows benefits on certain individuals, but does not damage other individuals in any concrete fashion, is the issue a justiciable one?

{¶41} These questions of constitutional construction are generally accepted as the types of

types of questions best resolved by courts, not determined through the political process. In fact, our Supreme Court has declared, "The power and duty of the judiciary to determine the constitutionality and, therefore, the validity of the acts of the other branches of government have been firmly established as an essential feature of the Ohio system of separation of powers. * * *." *Ohio Academy of Trial Lawyers*, 86 Ohio St.3d at 462, 715 N.E.2d 1062. " 'Interpretation of the state and federal Constitutions is a role exclusive to the judicial branch.' " Id., quoting *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 62, 676 N.E.2d 506.

{¶42} Thus, it seems axiomatic that these issues should be decided by the judiciary. But in which court and through what kind of action, if at all? For Brinkman, the most likely place would be the Ohio Supreme Court, and the most likely avenue would be a request for a writ of mandamus. Precedent for this has already been established in *State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp.*, 97 Ohio St.3d 504, 2002-Ohio-6717, 780 N.E.2d 981. In that case, a labor union petitioned the Supreme Court directly for a writ of mandamus in behalf of its members, whose privacy rights could be infringed but had not yet been infringed by the implementing of a workers' compensation law that authorized private employers to test their workers for drug usage without probable cause or individualized suspicion of wrongdoing. Although characterized as a writ of mandamus, the order procured was one that prohibited state actors, the private employers, from carrying out the actions mandated by the law that was declared unconstitutional. This is the kind of relief sought by Brinkman. He desires a court to issue an order prohibiting a state actor, Miami University, from carrying out the policy that he maintains is unconstitutional.

{¶43} The relief sought is perhaps more akin to a typical injunction than to a writ of mandamus. See id. at ¶ 72 (Moyer, C.J., dissenting); id. at ¶ 87 (Cook, J., dissenting).

Nevertheless, if the court follows its own precedent, it would provide an avenue of adjudication for Brinkman here. Another benefit of this approach is that the matter could be taken straight to the Supreme Court for determination of the fundamental issues involved. It is a foregone conclusion that if this matter is adjudicated by a trial court, it will be appealed by the losing side and that whoever loses at the appellate court level will appeal to the Supreme Court. If the Supreme Court will entertain the matter through its original jurisdiction, the process would be expedited.

{¶44} Of course, if the rationale of Chief Justice Moyer has reached ascendancy in the current Supreme Court, the court might not entertain a request for a peremptory writ. If this is the situation, Brinkman may have no judicial remedy.

{¶45} It could be that the fundamental issue in this case is a purely political one. Despite the previously quoted maxim from *Ohio Academy of Trial Lawyers*, it may be that some very important public and societal issues that hinge on constitutional interpretation are simply not justiciable. It may be that the Ohio people are saddled with the additional duty of seeing that the constitutional principle they established is carried out without the assistance of the courts.

{¶46} The potential political avenues of redress are through the other branches of government. State universities are part of the executive branch, carrying out, in part, the state's policy of providing postsecondary public education. It seems probable that the chief executive, the governor, could order his subordinate officials to carry out their duties in compliance with the Constitution, if he believed Miami University to be out of compliance and if he desired to do so. The remaining branch, the legislature, controls the purse strings by appropriating the funds required for the operation of the government. If the General Assembly is aware that a part of the executive branch may be ignoring constitutional restrictions, then it can induce constitutional

restrictions, then it can induce constitutional compliance by the exertion of financial pressure.

{¶47} These theoretical remedies, however, may be illusory. For any number of reasons, the governor and the General Assembly may decline to act, as they have declined to act so far, in any fashion that would address Brinkman's concerns.

Motion granted.