

IN THE COMMON PLEAS COURT OF
FRANKLIN COUNTY, OHIO

PROGRESSOHIO.ORG, INC., ET AL.

CASE NUMBER 11CVH 08 10807

Plaintiffs.

Judge Beatty

v.

JOBSONHIO. ET AL.

Defendants

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2011 OCT 25 PM 3:48
CLERK OF COURTS

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION WITH
MEMORANDUM IN SUPPORT
AND EXPEDITED HEARING REQUEST**

Plaintiffs hereby move this Court to grant a preliminary injunction pursuant to R.C. 2727.02 and Ohio R. Civ. P. 65. Specifically, Plaintiff's move the court to:

1. enjoin the defendants from taking any further action with regard to the funding or operation of Jobs Ohio, including but not limited to restraining the Director of the Department of Development from signing any grants allocating any funds, authority or assistance to JobsOhio, Inc. ("JobsOhio");
2. restrain the director from firing any employee of the Department of Development due to the creation of JobsOhio;
3. restrain the Office of Budget and Management from transferring any funds whatsoever to this entity or approving expenditures:

LS

4. restrain any actions by the Department of Development, the Office of Budget and Management, the governor or any party or employee of a party to this action from transferring or securitizing liquor revenues or otherwise moving liquor revenues from state control; and
5. set an expedited hearing on these motions along with an appropriate discovery schedule.

MEMORANDUM IN SUPPORT

Historical Background

For over thirty years, Ohio has depended on the Ohio Department of Development to handle the economic development functions of state government. As a state department, it operated openly and in public and its expenditures of public funds and awarding of tax incentives was available to the press and public under the Ohio Public Documents Act, R.C. 149 et seq. It is a sad reality of the 21st Century that much state economic development is simply corporate welfare. It is doled out to rent seeking corporations who threaten to leave a state in order to obtain public money to stay or to relocate here after a bidding war with some other unfortunate state government. Although some development funds are used to assist start up companies with new ideas, the bulk is paid to established corporations. Although the Ohio Department of Development was part of this system, at least all its actions were subject to scrutiny by the press, the public and the legislature. Everyone knew just what was going on.

Within days of taking office, Governor Kasich rammed the JobsOhio bill through the legislature. Kasich complained that the Department of Development could not write

those corporate welfare checks fast enough to make the corporations happy. It needed to be done faster---"at the speed of business."

Despite its name, JobsOhio has virtually no quantifiable duties regarding direct jobs creation in the state. See R. C. 187 et seq. It merely transfers determinations regarding appropriate payments of corporate welfare from state government in a public system to a private, secretive corporation, with a board of corporate directors. One method of controlling corruption in the operation of these sorts of state authorized economic development systems is to at least require the private economic company to come to the legislature for appropriations and be subject to oversight in that way. The JobsOhio scheme attempts to circumvent even accountability to the state legislature by providing it with an income stream created by selling bonds from future liquor profits and removing from the General Assembly funding control over JobsOhio. A yearly audit due March 1 without fiscal controls is worth little. In addition to these general problems with the concept of privatizing these sorts of government expenditures, the JobsOhio Act clumsily and repeatedly has violated the Ohio Constitution.

Procedural History

The JobsOhio law initially required that all challenges to the law be brought before the Ohio Supreme Court within 60 days of its enactment, R.C. 187.09. Plaintiffs here filed a challenge to the law, based upon seven violations of the Ohio Constitution. In the Ohio Supreme Court, plaintiffs argued that the provision requiring the filing of a declaratory judgment action before the Supreme Court violated Section Article IV Section 2(B)(1) of the Ohio Constitution that delineates the original jurisdiction of the Supreme Court. The Court determined that R.C. 187.09 violated separation of powers

and declared the provision ordering them to accept jurisdiction as invalid. *ProgressOhio.org v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101 (August 19, 2011). While the case was pending, the General Assembly remedied several of the other constitutional flaws as part of the budget process in Am. Sub. House Bill 153. Despite the Supreme Court opinion and the changes in the budget bill, the Jobs Ohio law remains seriously flawed.

Despite the fact that this case is pending alleging serious constitutional invalidity and the fact the Ohio Supreme Court has already determined part of it to be invalid, Governor Kasich has proceeded to illegally form the JobsOhio Corporation and has publicly announced his intention to promptly fund it. He has filed the articles of incorporation, named a board and that board has met and begun to take action to operate the corporation. (See Ex 1 and 2 attached) If this Court rules that JobsOhio is unconstitutional, any contract or expenditure on behalf of JobsOhio, to which the responsibilities for economic development will be transferred, will be void. Despite the fact that void contracts and expenditures would be highly detrimental to the state, the defendants refuse to wait for this court to rule on these important issues. By contrast, the defendants suffer no harm whatsoever by waiting for this court to rule, yet they continue with this case pending. The state however, may suffer irreparable injury because they are going forward with their unconstitutional plans to privatize Ohio's Department of Development and begin making risky investments of public dollars in private corporations.

Governor Kasich is proceeding to act in violation of the Ohio Constitution despite the fact that the General Assembly has largely accepted that the initial legislation (Am.

Sub. House Bill 1) and JobsOhio as originally conceived were illegal. As a result of this action and these plaintiffs, the supporters of the bill offered numerous amendments to this substantive law in the budget bill (Am. Sub. House Bill 153). This action has repealed some, but not all, of JobsOhio's unconstitutional provisions.¹

I. Standards for granting injunctive relief

R.C. 2727.03 grants this Court the authority to order injunctive relief during an action to maintain the status quo pending a decision. R.C. 2727.02 further indicates under what circumstances an injunction should be granted:

A temporary order may be granted restraining an act when it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of such act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual. See also Civil Rule 65.

Plaintiffs request a preliminary injunction to preserve the status quo pending a decision from this Court on the merits. For the injunction to issue, the requesting party must show that "(1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction." *Island Express Boat Lines, Ltd v. Put-in-Bay Boat Line Co.*, 6th Dist. No. E-06-002, 2007-Ohio-1041, ¶ 92, quoting *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267; see, also, Civ.R. 65(B) and R.C. 2727.02. In order for the plaintiffs to prevail on a motion for a temporary restraining

¹ Some might question the constitutionality of these changes to permanent state law in the budget as violating the one subject rule of the Ohio Constitution.

order pending hearing on the preliminary injunction, plaintiffs must show that harm is imminent.

A. Allowing Governor Kasich and other state and private actors to proceed with the operation of JobsOhio will cause irreparable harm to the state of Ohio and this danger is imminent.

The primary issue in determining whether to grant an injunction is whether a plaintiff's interests are facing an imminent threat of irreparable harm as a consequence of defendants' actions. The Ohio Supreme Court has set forth the standards for determining when a court of equity in Ohio should prevent the harm and whether an adequate remedy exists in law:

"It is not enough that there is a remedy at law; it must be plain, adequate and complete; or in other words, as practical, and as efficient to the ends of justice and its prompt administration, as the remedy in equity." *Culver v. Rodgers* (1878), 33 Ohio St.537, 545, 1878 WL 23, quoting *Boyce v. Grundy* (1830), 3 Pet. 210, 28 U.S. 210, 215, 7 L.Ed. 655. Thus, in determining the propriety of injunctive relief, adequate remedy at law "means that the legal remedy must be as efficient as the indicated equitable remedy would be; that such legal remedy must be presently available in a single action; and that such remedy must be certain and complete." *Fuchs v. United Motor Stage Co., Inc.* (1939), 135 Ohio St. 509, 14 O.O. 399, 21 N.E.2d 669. *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 2002-Ohio-2427.

The threat is imminent since Governor Kasich has created and is moving forward to staff and fund JobsOhio. He has filed the articles of incorporation with the Secretary of State's office and has named a board of directors so that he can begin to transfer state money to the entity and then secretly allocate it to various private companies. (Ex 1 -5) If JobsOhio is unconstitutional, all these actions are void. Mark Kvamme has been named CIO and has publicly stated that he will start entering into contracts to spend current

appropriations. (Ex. 3). A Board of Directors has been named and they are beginning to take action. They know they may be acting totally without authority, and yet they plan to proceed in negotiating and entering into potentially void contracts and grants. (See attached Ex. 2-6) Each party who changes their position after entering one of these contracts may suffer loss, and will have no one to sue since JobsOhio does not really even exist. At the request of the attorney general, the Controlling Board has approved \$1.48 million for outside legal work regarding the funding of JobsOhio including the questionable bonding of future liquor sales. (Ex. 7)

Each illegal contract is a potential lawsuit against the state. If JobsOhio is later determined by this Court to be unconstitutional, all fund transfers will be illegal. All contracts and grants entered into with or on behalf of the entity will be null and void. Any contracts that have been signed to hire board members will be illegal and any compensation or reimbursements paid to them will be illegal. Any transfers of funds by the Department of Development or Office of Budget and Management will be void. No single lawsuit will be available to correct even the contract issues involved here.

Then there are the suits this will spawn regarding the status of various employees. Every removal order will be void since each will state the lay off is necessary due to lack of work at Development due to the creation of JobsOhio. When they lay off Department employees, any classified employee is entitled to bumping rights, which may effect other agencies, especially with regard to support staff. Any employee separated from the Department of Development will be entitled to reinstatement, including all back pay and benefits should this legislation be determined to be void. Any bumped employee will

have a cause of action. Every employee hired at JobsOhio will be illegal and all salary paid to employees also illegal.

Since plaintiffs allege that state actors are attempting to injure the state as an entity, there is no one from whom to collect a money judgment. The taxpayers are left to pay the bill regardless.

Currently, the Department of Development exists to retain companies in the state and assist start-ups, along with other duties. This Department currently operates totally in the open, with all its actions and decisions subject to public scrutiny and fully accountable to the public for all expenditures. Its employees are public servants accountable to the public. JobsOhio is a special private corporation set up by specific statute. It is exempt from public records and open meetings requirements. Private individuals will run it largely unaccountable to anyone. It will be given millions of state liquor revenues to spend with only minimal oversight. One and one half million dollars has already been approved to spend on this illegal entity. Irreparable harm occurs as soon as this entity obtains tax dollars to spend or tax dollars are spent on its behalf as the attorney general's office plans to do with significant payment to outside counsel.

B. Plaintiffs are likely to prevail on the merits.

Although the complaint challenges multiple aspects of JobsOhio and the General Assembly has addressed some of the original constitutional infirmities, at least three major issues remain unaddressed.

1. The Ohio Constitution forbids joint ventures between the state and private enterprises.

The Ohio Constitution has long prohibited state involvement with private enterprise. *Grendell v. Ohio Environmental Protection Agency*, (Ohio App. 9 Dist. 2001)

146 Ohio App.3d 1, 8 “In general, Article VIII has been said to be an expression of concern with placing public tax dollars at risk to aid private enterprise.” *citing State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow* (1991), 62 Ohio St.3d 111, 114, 579 N.E.2d 705; *Walker v. Cincinnati* (1871), 21 Ohio St. 14, 53-56. O Constit. Article VIII Section 4 adopted as part of the 1851 Constitution, still in effect today was designed to avoid entanglement of the state with private enterprise and the acquisition of private debt by the state. Courts have interpreted this to forbid any joint ventures between private companies and the state of Ohio. *Id.* Through voter-approved constitutional amendments, this prohibition has been modified during the 20th Century in order to allow the state to become more involved with promotion of private sector economic development, particularly with respect to debt. But none of those changes allows the state to directly or indirectly take equity positions in private companies or to privatize this quintessentially government function by creating a private corporation to be run secretly by the governor and corporate profiteers operating outside of ethical and other governmental controls and restraints.

On multiple occasions, the Governor and JobsOhio’s new Chief Investment Officer Kvamme have stated their intention to invest public dollars in private corporations through JobsOhio. Ex. 3, 5, and 6. Indeed, the Toledo Blade noted in this editorial about the dubious creation of JobsOhio that:

Mr. Kasich says he created the agency to give state government more freedom to seek private capital and to use private and public funds in new ways — such as direct investment in startup businesses. JobsOhio will function much as a private venture capitalist does. Ex. 5.

Indeed, the very creation of JobsOhio, now a private corporation, is itself in impermissible investment of public dollars in a private entity. Now, the state has appropriated tax dollars to pay JobsOhio's legal fees, further proof that this entity constitutes an illegal joint venture. Ex 7.

Curiously, in both public statements by Mr. Kvamme and in Defendant JobsOhio's Motion to Dismiss filed before this Court, Mr. Kvamme and JobsOhio have recently stated that, all that past rhetoric aside, at least for the time being, they have no intention of making equity investments. *See also* JobsOhio Motion to Dismiss at p. 14. JobsOhio states that Plaintiffs – or anyone else – will just have to wait and see if JobsOhio does in fact make any equity investments. This is convenient position for JobsOhio to take since R.C. 187.03(F) does not require any disclosures of investments during a fiscal year. All that is required is a report to be filed on the first day of March of each year, ("the chief investment officer of JobsOhio shall prepare and submit a report of the corporation's activities for the preceding year.") Meanwhile, R.C. 187.09(C) provides that "any claim asserting that any action taken by JobsOhio violates any provision of the Ohio Constitution shall be brought in the court of common pleas of Franklin county within sixty days after the action is taken." As a result, once the public can review whatever action of JobOhio's chief investment officer decides to disclose, will automatically be time barred from bringing suit.

2. *The Ohio Constitution Forbids Special Acts Conferring Special Corporate Powers*

Article XIII Section 1 and Section 2 of the Ohio Constitution require that all corporations in this state be formed under the general laws of Ohio and be governed by

laws applicable to all corporations in the state. The General Assembly is prohibited from creating private corporate entities with special legislation like H.B. 1.

Article XIII, Section 1 of the Ohio Constitution prohibits the General Assembly from passing any special act conferring corporate powers. This statute creates the nonprofit corporation JobsOhio. R.C. 187.01 and this is not modified by H.B. 153. It authorizes the existence of the corporation and includes statutory requirements setting forth everything from the name the organization to its structure and the qualifications of its board of directors. R.C. 187.01, et seq. These lengthy code sections, particularly R.C. 187.01, 187.02 and 187.03, by their own terms apply to *no other* corporations than JobsOhio.

The JobsOhio Act takes the extraordinary step of exempting JobsOhio from general laws governing corporations.² JobsOhio is expressly **not** being formed or governed by the general laws of Ohio. It is a specific act conferring specific corporate powers on a specific corporation and therefore the General Assembly exceeded its constitutional authority by violating Article 8, Section 1 of the Ohio Constitution. R.C. 187.01 et seq.

3. *The Ohio Constitution Requires Specified Appropriations and Limits All Appropriations to No Longer than Two Years; House Bill Amounts to an Unconstitutional Open-Ended Appropriation to the JobsOhio Board.*

² R.C. Sec. 187.03(A). "JobsOhio and its board of directors are not subject to the following sections of Chapter 1702 of the Revised Code: sections 1702.03, 1702.08, 1702.09, 1702.21, 1702.24, 1702.26, 1702.27, 1702.28, 1702.29, 1702.301, 1702.33, 1702.34, 1702.37, 1702.38, 1702.40 to 1702.52, 1702.521, 1702.54, 1702.57, 1702.58, 1702.59, 1702.60, 1702.80, and 1702.99". This exhaustive list excludes only JobsOhio and no other corporations from notice and voting requirements, the purposes for which Ohio non-profit corporations may operate, prohibitions from making false entries or reports, etc.

In *State, ex rel. Dickman v. Defenbacher* (1948), 85 Ohio App. 398, 401, it was held: "Under Article II, Section 22, of the [Ohio] Constitution, the General Assembly may not make an appropriation effective for more than two years," and "[n]o General Assembly can create obligations which extend beyond its own life." See, also, *State, ex rel. Preston v. Ferguson* (1960), 170 Ohio St. 450, and 1965 Ohio Atty.Gen.Ops. No. 65-80, at 2-164. Cf. *State, ex rel. Ross v. Donahey* (1916), 93 Ohio St. 414. Under the Act, the JobsOhio board would be acting to tie up state finances in contravention of Article 2, Section 22. In *Sorrentino v. Ohio National Guard*, the court stated, "This court has long held '[t]hat no officers of the state can enter into any contract, except in cases specified in the constitution, whereby the general assembly will, two years after, be bound to make appropriations either for a particular object or a fixed amount--the power and the discretion, intact, to make appropriations in general devolving on each biennial general assembly, and for the period of two years.'" (1990) 53 Ohio St.3d. 214, *quoting State v. Medbery* (1857), 7 Ohio St. 522, syllabus.

The plaintiffs in this case a strong legal support for invalidating Jobs Ohio and this is sufficient to indicate they are likely to prevail on the merits.

C. The interests of third parties are protected and in no way injured by restraining the defendants.

Enjoining the actions of defendants is necessary to protect the interests of contractors and employees. An injunction would harm no third parties at all in any quantifiable way. On the other hand, the amount of litigation that will result from these rash acts is incalculable and the potential liability to the taxpayers is significant. Contractors, employees and taxpayer will all be protected by the injunction. Restraining

the defendants until the Court makes a ruling in this case costs the state absolutely nothing. The Department of Development will simply continue its long time operations. The defendants must be restrained in order to protect the state.

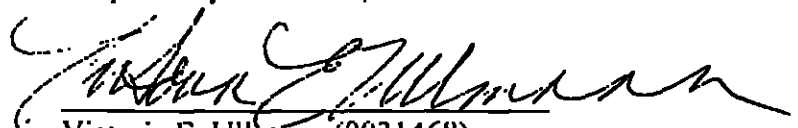
D. Waiver of Bond is appropriate.

Although Ohio R. Civ. P. 65 requires the filing of a bond in the case of *private* actors, this is a *public* action and two legislators are plaintiffs to the action. All plaintiffs are acting in the public interest. The state will suffer no loss whatsoever if they are restrained until this Court makes a decision. Plaintiffs are simply asking for the state to maintain the operations it has used for over thirty years.

EXPEDITED HEARING REQUEST

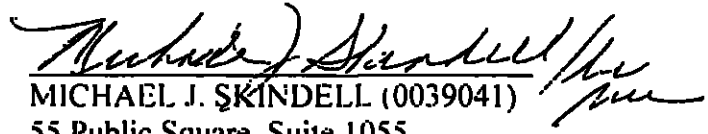
Due to the imminent nature of the threat of harm to the state and many private actors, the plaintiffs request an immediate order restraining the defendants from any acts in furtherance of their JobsOhio agenda. Further plaintiffs pray that this court order an expedited hearing to enjoin defendants from all further actions.

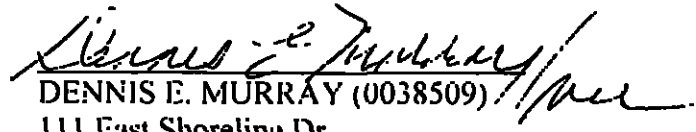
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of this Motion was sent by ordinary U.S. mail on date of filing to the following and email.

MICHAEL DEWINE (0009181)
Ohio Attorney General
AARON D. EPSTEIN (0063286)
PEARL M. CHIN (0078810)
Assistant Attorneys General
30 E. Broad Street, 16th Floor
Columbus, OH 43215

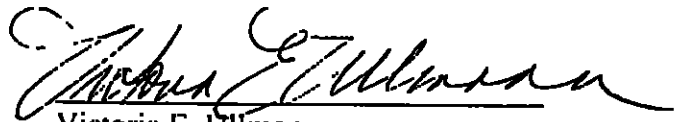
Attorney for Defendants
Ohio Governor John R. Kasich
Director of Ohio Department of
Development James A. Leftwich, and
Director of Ohio Office of Budget &
Management Timothy S. Keen

Douglas Cole
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Columbus, Ohio 43216

Aneca E. Lasley
Squires, Sanders and Dempsey.

E1395 - G99

2000 Huntington Center
41 South High Street
Columbus, Ohio 43215

A handwritten signature in black ink, appearing to read 'Victoria E. Ullmann', written over a horizontal line.

Victoria E. Ullmann
Attorney for ProgressOhio.org

IN THE COMMON PLEAS COURT OF
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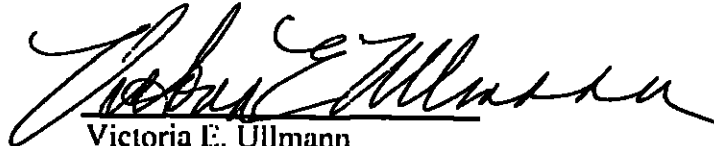
Defendants

AFFIDAVIT OF VICTORIA ULLMANN

Victoria E. Ullmann, being first duly sworn, testifies as follows:

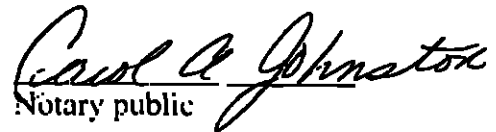
1. Attached Ex 1 is a true and accurate copy of the Articles of Incorporation for JobsOhio filed with the Ohio Secretary of State's office.
2. Attached Ex. 2 is a true and accurate copy of the press release for Governor John Kasich's office, dated July 11, 2011 naming JobsOhio Board members, obtained from the governor's office official web site.
3. Attached Ex 3 is a true and accurate copy of the September 9, 2011 article from the Columbus Dispatch describing actions of Jobs Ohio Board, from their official web site.
4. Attached Ex 4 is a true and accurate copy of an article from the Columbus Dispatch, September 9, 2011.
5. Attached Exhibits 5 and 6 are true and accurate copy of an editorials from the Toledo Blade published 7/15/2011 and 10/25/11 from their web page.

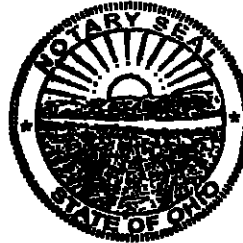
6. Attached Exhibit 7 is a true and accurate copy of an article from Gongwer News Service October 25, 2011.


Victoria E. Ullmann
Affiant

Notary

Sworn and subscribed before me, a duly appointed notary for the state of Ohio on October 25th 2011, the in County of Franklin, State of Ohio.


Notary public



CAROL A. JOHNSTON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES OCTOBER 22, 2015

E1395 - H3



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
07/06/2011	201118601515	DOMESTIC ARTICLES/NON-PROFIT (ARN)	125.00	100.00	00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

CT CORPORATION SYSTEM
1300 EAST NINTH STREET
CLEVELAND, OH 44114

STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Jon Husted**2032191**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

JOBSOHIO

and, that said business records show the filing and recording of:

Document(s)

DOMESTIC ARTICLES/NON-PROFIT

Document No(s):

201118601515

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 5th day of July, A.D.
2011.

Ohio Secretary of State

E1395 - H4



Prescribed by:

Ohio Secretary of State
Central Ohio (614) 466-3910
Toll Free: 1-877-SOS-F.I.J. (1-877-767-3453)

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Expedite this Form: (Select One)

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☒ Yes PO Box 1390
Columbus, OH 43216
— Includes an additional fee of \$100 —

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Columbus, OH 43216

INITIAL ARTICLES OF INCORPORATION

(For Domestic Profit or Nonprofit)

Filing Fee \$125.00

RECEIVED

JUL 05 2011

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

SECRETARY OF STATE

(CHECK ONLY ONE (1) BOX)

(1) <input type="checkbox"/> Articles of Incorporation Profit (113-ARP) ORC 1701	(2) <input checked="" type="checkbox"/> Articles of Incorporation Nonprofit (114-ARN) ORC 1702	(3) <input type="checkbox"/> Articles of Incorporation Professional (170-ARP) Profession ORC 1705
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Complete the general information in this section for the box checked above.

FIRST: Name of Corporation JobsOhio

SECOND: Location Columbus Franklin
(City) (County)

Effective Date (Optional) _____ Date specified can be no more than 90 days after date of filing. If a date is specified, the date must be a date on or after the date of filing.
(mm/dd/yyyy)

☒ Check here if additional provisions are attached

Complete the information in this section if box (2) or (3) is checked. Completing this section is optional if box (1) is checked.

THIRD: Purpose for which corporation is formed

Please see attached.

Complete the information in this section if box (1) or (3) is checked.

FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)

(No. of Shares)	(Type)	(Par Value)
-----------------	--------	-------------

(Refer to instructions if needed)

E1395 - H5

Completing the information in this section is optional**FIFTH:** The following are the names and addresses of the individuals who are to serve as Inicial Directors.

(Name) _____

(Street) _____ **NOTE: P.O. Box Addresses are NOT acceptable**

(City) _____ (State) _____ (Zip Code) _____

(Name) _____

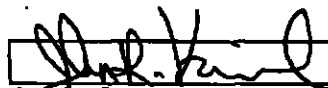
(Street) _____ **NOTE: P.O. Box Addresses are NOT acceptable**

(City) _____ (State) _____ (Zip Code) _____

(Name) _____

(Street) _____ **NOTE: P.O. Box Addresses are NOT acceptable**

(City) _____ (State) _____ (Zip Code) _____

REQUIREDMust be authenticated
(signed) by an authorized
representative
(See Instructions)

Authorized Representative

John R. Kasich

(print name)

July 5, 2011

Date

Authorized Representative

Authorized Representative

(print name)

Date

Date

Authorized Representative

Authorized Representative

(print name)

Date

Date

E1395 - H6

Complete the information in this section if box (1) (2) or (3) is checked.

ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of JobsOhio
hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by
statute to be served upon the corporation may be served. The complete address of the agent is

CT Corporation System

(Name)

1300 East Ninth Street

(Street)

NOTE P.O. Box Addresses are NOT acceptable

Cleveland

, Ohio

44114

(City)

(Zip Code)

Must be authenticated by an
authorized representative

Authorized Representative

July 5, 2011

Date

Authorized Representative

Date

Authorized Representative

Date

ACCEPTANCE OF APPOINTMENT

The Undersigned,

CT Corporation System By Diane Stout

, named herein as the

Statutory agent for,

JobsOhio

, hereby acknowledges and accepts the appointment of statutory agent for said entity

Signature Diane Stout Diane Stout, Asst. Secretary
(Statutory Agent)



JOHN R. KASICH

GOVERNOR • STATE OF OHIO

Communication Department

July 11, 2011

Rob Nichols, (330) 760-7582

KASICH APPOINTS MEMBERS TO JOBSOHIO BOARD

COLUMBUS – Gov. John R. Kasich today appointed eight prominent business and education executives to the board of directors of JobsOhio, the state's new private, nonprofit corporation that will lead Ohio's job creation and economic development activities.

Named to the JobsOhio board were:

- James C. Boland, Retired Vice Chairman, Ernst & Young, and former President, CEO & Vice Chairman, Cavaliers Operating Company, Cuyahoga County, to serve for a term beginning July 11, 2011 and ending July 5, 2015;
- Steven A. Davis, Chairman of the Board and CEO, Bob Evans Farms, Inc., Franklin County, to serve for a term beginning July 11, 2011 and ending July 5, 2015;
- E. Gordon Gee, President, The Ohio State University, Franklin County, to serve for a term beginning July 11, 2011 and ending July 5, 2012;
- C. Martin Harris, M.D., Chief Information Officer and Chairman, Information Technology Division, Cleveland Clinic, Geauga County, to serve for a term beginning July 11, 2011 and ending July 5, 2015;
- Gary R. Heminger, President and CEO, Marathon Petroleum Corporation, Hancock County, to serve for a term beginning July 11, 2011 and ending July 5, 2015;
- Mark D. Kvamme, Special Limited Partner, Sequoia Capital, Franklin County, to serve for a term beginning July 11, 2011 and ending July 5, 2013;
- Bob McDonald, Chairman of the Board, President and CEO, Procter & Gamble, Hamilton County, to serve for a term beginning July 11, 2011 and ending July 5, 2012;
- Pamela Springer, President and CEO, Manta Media, Inc., Franklin County, to serve for a term beginning July 11, 2011 and ending July 5, 2013.

A ninth board member remains to be appointed.

Board members serve without financial compensation. The terms will run from one to four years and will be staggered.

The official articles of incorporation for JobsOhio were filed July 5 with the Secretary of State's office. With the filling of the board positions, JobsOhio will begin the task of hiring a professional staff. JobsOhio will streamline operations by working in close cooperation with six existing regional economic development organizations that have been asked to submit proposals for coordinating regional economic development strategies and activities. The six groups are: Cincinnati USA Partnership, Columbus 2020!, Dayton Development Coalition, Ohio Appalachian Business Council, Regional Growth Partnership and Team NEO.

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Kasich names JobsOhio board

E. Gordon Gee among eight appointees

By Joe Vardon

The Columbus Dispatch Monday July 11, 2011 5:52 PM

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Gov. John Kasich's still-evolving private economic development agency met publicly for the first time this morning, revealing JobsOhio's eight board members and installing Mark Kvamme as its interim chief investment officer.

The board, appointed by Kasich, consists of Kvamme, Ohio State University President E. Gordon Gee, former Ernst & Young and Cleveland Cavaliers executive James Boland, Bob Evans executive Steven A. Davis, the Cleveland Clinic's C. Martin Harris, Marathon Petroleum's Gary Heminger, Procter & Gamble's Bob McDonald, and Pamela Springer of Manta Media.

Kvamme said a ninth board member will be appointed within 60 days. Board members will serve staggered terms and without pay.

Kasich, who through language slipped into the state budget removed himself from the JobsOhio board and stripped other powers he previously had over the new agency, has clear ties to the current, corporate-based board, beginning with Kvamme.

Originally tabbed by the governor as the Department of Development chief, Kvamme, a California venture capitalist by trade, was moved into Kasich's office as director of job creation. He resigned from that post on June 30 to take on his new role.

Kasich and Gee have formed a public, friendly working relationship that has included economic-development partnerships and construction reform, with the governor often referring to the Ohio State president as "Ohio's greatest politician."

Davis and Heminger have both appeared at press conferences with Kasich in the past several months to announce state-issued tax incentives that Kasich said were given to ensure that Bob Evans and Marathon remained in Ohio.

Kasich also said that he worked with Boland and Harris while serving as a board member for Invecare. Additionally, as chief information officer and chairman of the information technology division of Cleveland Clinic, Harris is working with Kasich to create a medical coordinator in Ohio.

"I don't think we could do better for a leadership team here," Kasich said. "Maybe when JobsOhio first came out, people thought, well you know... they'll put their political friends on and all that, but it's crystal clear this is a very serious endeavor."

The governor heralded his selections for the board members' business and development credentials and, among other things, their diversity. Harris and Davis are African-Americans and Springer is a woman.

Kasich found himself in hot water early in this term when his initial cabinet picks were void of diversity.

"It's pretty clear, after an initial rough start, diversity is a big deal for me,

period, across the board," Kasich said.

Kvamme, as he previously stated he would, declined a salary to serve as the interim day-to-day chief of JobsOhio. Boland, who was tapped as chairman of the board, suggested a \$300,000 salary and bonuses as determined by the board for Kvamme.

The board will conduct a national search for a permanent chief investment officer. Kvamme said he would be happy to be considered a candidate.

As of now, JobsOhio's funding stream appears limited. Kvamme said he hopes the previously identified funding source for the agency -- the leasing of the state's liquor profits -- will be complete by January.

In the meantime, Kvamme said, JobsOhio would seek private donations to operate, initially between \$5 million and \$10 million. He also said JobsOhio would get funding through its yet-to-be-established contracts with the Department of Development for services.

A spokesman with the Department of Development said the \$1 million appropriated for JobsOhio by the General Assembly will go to startup costs such as insurance, computers and building a website, not toward paying salaries.

"We have not received any private donations yet, but we are in discussions with several organizations that economic development is very important to," Kvamme said. "Folks like power companies, and banks, and insurance companies, and other folks where this is a very important element of what they're doing."

Kvamme said he hopes initially to hire a staff of 10 to 12 people, and JobsOhio would have 50 employees when fully developed.

Also evolving is how JobsOhio will co-exist with the Department of Development, the state's traditional development agency that will remain in some form.

Kasich said the development department, now headed by James Leftwich, will continue to facilitate state-sponsored tax incentives offered to retain and attract companies.

Kvamme said JobsOhio will use money available from the lease of Ohio's liquor sales -- expected to be about \$100 million per year -- for job training grants, loans and investments in infrastructure.

Kvamme also said that the venture-capital component of JobsOhio, in which the agency could invest in startup companies, could be funded through the liquor profits or from private donations.

The articles of incorporation for JobsOhio were filed with Ohio's secretary of state on Tuesday. The agency is also working with regional economic-development organizations Cincinnati USA Partnership, Columbus 2020!, Dayton Development Coalition, Ohio Appalachian Business Council, Regional Growth Partnership and Team NEO to streamline development strategies.

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Jackson County man joins JobsOhio board

Kasich's 9th selection is a business leader and campaign donor

By Joe Vardon
The Columbus Dispatch Friday September 9, 2011 5:19 AM

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Gov. John Kasich's JobsOhio board is complete after the Republican governor appointed Lawrence J. Kidd to the nine-member panel yesterday.

Kidd, 47, president and chief executive officer of Reliable Staffing Services and RSS Professional, two independently owned staffing companies in Jackson County, will serve as the lone Appalachian-region representative on the board of Kasich's privatized, nonprofit economic-development agency.

Kidd also fits a theme among other board members, in that he has ties to Kasich, having donated \$2,450 to the governor's campaign and transition team coffers last year and receiving a Kasich appointment to another board earlier this year.

Many of the eight JobsOhio board appointments Kasich made in July have ties to the governor, either through campaign contributions, publicly funded incentive packages signed off on by Kasich or private business relationships before Kasich was governor.

"These appointees are considered to be among the best and brightest from the business community," Kasich spokesman Rob Nichols said. "It's not surprising some of them share the governor's philosophical agenda of how to jump-start the economy."

JobsOhio board members serve without pay.

On July 11, Kasich appointed to the board: Ohio State University President E. Gordon Gee; Mark Kvamme, Kasich's former director of job creation and currently the interim chief investment officer for JobsOhio; former Ernst & Young and Cleveland Cavaliers executive James Boland; Bob Evans executive Steven A. Davis; the Cleveland Clinic's C. Martin Harris; Marathon Petroleum's Gary Heminger; Procter & Gamble's Bob McDonald; and Manta Media's Pamela Springer.

Kvamme, a venture capitalist who was Kasich's first pick to be his Department of Development director, donated more than \$22,000 to Kasich's last campaign. Boland donated \$22,000, Heminger gave \$3,600 and McDonald donated \$2,000. Gee made a \$1,000 contribution to Kasich's transition fund.

Since Kasich has taken office, both Davis and Heminger have stood with him to announce that their companies had landed state tax incentives that Kasich said were given to ensure that Bob Evans and Marathon Petroleum remained in Ohio.

Kasich also worked with Boland and Harris while serving as a board member for Inuvacare, a Lorain County health-care company.

"It sounds like this appointment process is a friends-and-family process,"

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...said Brian Rothenberg, executive director for the liberal policy group ProgressOhio. Rothenberg has filed several lawsuits against Kasich, including some over JobsOhio.

Kidd, whose term runs through July 5, 2015, has founded or led two economic-development entities in southeastern Ohio. Kasich already has appointed Kidd to serve as a member of the Rio Grande Community College Board of Trustees.

"My appointments are related to my background in business," Kidd said.

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toledoBlade.com

Printed Tuesday, October 25, 2011

A test of faith

Gov. John Kasich has named eight of the nine members of the board that will oversee his new, largely private economic development initiative, JobsOhio. No surprise: Seven are business and education heavyweights with ties to the governor; the eighth is a Kasich ally who actually will run the program.

Yet to be determined is whether the new effort is a leap of faith or a plunge from a precipice.

Mr. Kasich says he created the agency to give state government more freedom to seek private capital and to use private and public funds in new ways — such as direct investment in startup businesses. JobsOhio will function much as a private venture capitalist does.

It will offer financial incentives, including seed money, to businesses that come to Ohio in return for stakes in those companies. Profits from the stakes would come back to the state.

Because public money is involved, there are valid concerns about JobsOhio's accountability. The governor generally responds to these questions with vague "trust me" assurances.

JobsOhio also will seek private investment, which raises questions about whom the group will answer to: taxpayers or private investors. Because Jobs-Ohio will have a dedicated funding stream — profits from state liquor sales — it will be less accountable to the General Assembly than agencies that must go back to lawmakers for money every year.

Leasing liquor profits to JobsOhio will yield a one-time, \$500 million bonus for the state's general fund. But it will subtract annual profits from state coffers for the duration of the lease — perhaps as long as 25 years. This year, liquor sales contributed \$136 million to the state budget. How will that money be replaced?

JobsOhio is exempt from important state regulations that govern public transparency. It will be allowed to play by its own rules in areas such as open meetings, open records, ethics, conflicts of interest, lobbying, legislative oversight, financial disclosure, gifts and outside income, contracting, and collective bargaining. Mr. Kasich again assures Ohioans they have nothing to worry about.

The state inspector general will have only limited ability to monitor JobsOhio's activities. The auditor general won't be required to review its finances. Contracts and employee salaries and bonuses will be disclosed only in annual reports.

Governor Kasich says the agency needs the freedom to work "at the speed of business." Gary Heminger, chief executive officer of Marathon Petroleum Corp. and the only member of the board from this part of the state, said: "You can trust that I'll certainly look after northwest Ohio."

But the real work of JobsOhio will be done by venture capitalist Mark Kvamme and his staff, away from public scrutiny. Ohioans are asked to accept on faith that the agency will focus on attracting good-paying jobs with good benefits, not on maximizing return on investment.

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Mr. Kasich is correct: Ohio must be able to act quickly and efficiently to recruit businesses. But giving up transparency and public accountability to such a degree in return for promises of job creation is a lot to ask on faith alone.

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The Toledo Times ®

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Ohio Inc.

When your governor is a former investment banker and his jobs guru is a venture capitalist, you shouldn't be surprised when your state starts to look like a corporation. But when the result is full-speed-ahead faith in a governance model that looks more like Goldman Sachs than John Locke, it's time to slow down and ask whether transforming the state into Ohio Inc. is a desirable goal.

A good place to start would be Gov. John Kasich's plan to lease the state's liquor distribution network to his new, private economic-development group.

Ohio is one of 19 states in the liquor business. Last year, the state made a record profit of nearly \$229 million on the 10.8 million gallons of vodka, gin, and other spirits it sold. Liquor sales, which have risen by almost 5 percent since 2008 despite the recession, offer one of the state's most secure revenue streams.

A portion of this revenue paid bond debts guaranteed by liquor profits. Part of the money went to the state general fund. Minuscule amounts — \$4.2 million to the Department of Alcohol and Drug Addiction Services and \$1 million to the Department of Health — funded alcohol treatment and public safety programs.

Mr. Kasich wants to shift these profits to JobsOhio for 20 to 25 years. In return, the state would get \$1.2 billion.

Mark Kvamme, a Silicon Valley venture capitalist, the governor's director of job creation, and almost certainly a future member of the JobsOhio board, says that's "fair market value." But it's at least an open question whether leasing liquor profits that could total \$6 billion over the next two decades for 20 percent of their value is a sound business decision.

The governor proposes using \$500 million of the \$1.2 billion to help balance the first year of his proposed \$55.5 billion two-year budget. The rest would pay off the bonds guaranteed by liquor profits. JobsOhio would borrow money to lease the liquor profits, then use the profits to repay the loan and invest in companies that want to set up or expand in Ohio.

Ohio, through JobsOhio, would become a venture capitalist, owning part of at least some of the companies it puts money into. As questionable as that prospect is, there are other concerns.

The Republican-led General Assembly has exempted JobsOhio, which will replace the state Department of Development, from all or part of open-government laws that ensure transparency in state agencies. Control of liquor profits will make the group headed by the governor even less answerable to lawmakers, who won't control its purse strings.

Republicans often say that the market, not government, should determine winners and losers in business. How does that square with the creation of a government agency that will engage practices that are all about

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winners and losers, and might even have a monetary interest in making sure some businesses win and others do not?

Republicans have measured state spending by the number of private jobs it helps create, and scoff at the notion of public investment as a smoke screen for more government spending. By that measure, isn't JobsOhio another spending plan that promises jobs at some future date?

What will happen to the treatment and safety programs now funded by liquor profits? Will the people these programs are helping have to sacrifice in the drive to create corporate Ohio?

So far, Governor Kasich has offered lots of vague assurances but few details about the liquor plan. Mr. Kvanme has offered condescension: "For all you users of alcohol, nothing will change," he said. "You can still have your bourbon. You can still have your gin, OK?"

Not OK. Ohioans deserve answers to legitimate concerns, not a commentary on their drinking habits.

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Tuesday, October 25 2011

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Special Update, Tuesday, October 25, 2011, 11:08 AM

Kasich Outlines Plan For Turnpike Proceeds

Special Update, Tuesday, October 25, 2011, 09:13 AM

SB5 Opposition Gains Steam In Latest Poll; Kasich Approval Slips

Ohio Report for Monday, October 24, 2011

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Redistricting Talks Stall; Black Caucus Deal With GOP Still Possible

Negotiations between Republicans and Democrats on revising congressional maps were frozen as of Monday, but black lawmakers still might be willing to deal directly with the GOP majority.

Rep. Sandra Williams (D-Cleveland), president of the Ohio Legislative Black Caucus, said in an interview that she still hopes to be able to bring Republican and Democratic General Assembly leaders together to hash out a compromise on new congressional district boundaries.



Controlling Board Approves Legal Assistance For JobsOhio Funding

The Controlling Board on Monday approved \$1.48 million for outside legal work in determining how existing liquor sales will fund JobsOhio, the new privatized arm for state development initiatives.

Some Social Service Levies Likely Result Of State Budget Cuts, Others On Regular Cycle

Local social services tax levies set to appear on the Nov. 8 ballot reflect a variety of reactions to state funding levels, with record requests surfacing among some programs.

Amish Target Wild Turkey Rules On Electronic Game Checking

Amish hunters took aim at new rules for electronically checking wild turkey tags, but missed the mark with lawmakers as the new regulations cleared a review panel Monday.

Yost Offers Shared Services Advice At Forum

As a variety of school and local government representatives considered shared services to save costs Monday, Assistant Dave Yost highlighted efforts he is making to slim down state government.



Politics Notebook: 'Personhood' Petition Rejected; Fox's Hannity To Film At Statehouse With Kasich; Romney To Cincy; Issue 2 Ads Feature 'Kasich', Issue 3

Attorney General Mike DeWine said Monday his office had rejected petition summary language from a group seeking a constitutional amendment on civil rights for fertilized embryos.

Also In The Monday Report

Ohio Business: Smucker's Announces Acquisition; CONSOL And Hess Close On Utica Shale Deal; Scotts Miracle-Gro Supplemental Event Planner

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CONTROLLING BOARD APPROVES LEGAL ASSISTANCE FOR JOBSOHIO FUNDING

The Controlling Board on Monday approved \$1.48 million for outside legal work in determining how existing liquor sales will fund JobsOhio, the new privatized arm for state development initiatives.

The panel gave permission for the attorney general's office to waive competitive selection for McDonald Hopkins law firm of Cleveland to contract for fiscal year 2012 at a cost of \$891,000. In a separate action, the board approved an increased appropriation request of about \$594,000 for the Department of Commerce for related outside counsel.

The work will address startup funding JobsOhio will have in using existing liquor sales, according to the agency's chief counsel Don Grubbs. The department of Commerce will continue regulatory oversight of liquor sales.

Monday's decision will not determine how funds are spent or disbursed for JobsOhio economic development activities. Controlling Board President Randy Cole said the legal work will help set up the framework to allow JobsOhio to get started in development projects.

Mr. Grubbs told Sen. Chris Widener (R-Springfield) the state is expected to recoup funding from JobsOhio that was put forth on Monday. Mr. Grubbs said it is the intention of the participating agencies that additional funding beyond the price outlined Monday would not be needed.

Rep. Clayton Luckie (D-Dayton) said he would like to see corresponding percentages of liquor sales benefit the areas from which they came. He also expressed his desire for businesses owned by minorities and women to have access to JobsOhio funding.

"It's hard telling folks that ' You can drink my liquor but I'm not going to put the money back into the community which I drink it from.' And that's the bottom line. That was the concern," Mr. Luckie said in an interview.

Robin Rose, legal counsel for the Office of Budget and Management, said a "checklist" is being drafted and that women- and minority-owned businesses considerations are being taken into account.

"That's something that's always on our radar and as you mention it's something that we'll pay particular attention to as well," she said.

In separate action, the Controlling Board approved other items on its agenda:

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