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**IN THE COMMON PLEAS COURT OF  
FRANKLIN COUNTY, OHIO**

PROGRESSOHIO.ORG, INC., ET AL.

CASE NUMBER 11CVH 08 10807

Plaintiffs,

Judge Beatty

v.

JOBSSOHIO, ET AL.

Defendants

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**PLAINTIFFS' FIRST AMENDED COMPLAINT**

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**I. INTRODUCTION**

1. In 2011, the 129<sup>th</sup> Ohio General Assembly enacted and Governor John R. Kasich signed Amended Substitute House Bill 1 ("Am. Sub. H.B. 1"), effective February 18, 2011, which amends Revised Code Sections 1.60, 102.01, 102.02, 102.022, 117.01, 121.01, 121.22, 121.41, 121.60, 121.67, 122.011, 124.01, 145.012, 149.011, 2921.01, and 4117.01 and to enacts Revised Code Sections 187.01 to 187.12 of the Revised Code to authorize the Governor to form a nonprofit corporation called JobsOhio that would perform such state economic development functions as directed by law and pursuant to a contract with the Department of Development, and to make an appropriation.

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2. On April 18, 2011, Plaintiffs herein filed in the Supreme Court of Ohio pursuant to Section 3 of Am. Sub. H.B. 1 a complaint for declaratory and injunctive relief [Ohio Supreme Court Case Number: 2011-0622] seeking a declaration that Am. Sub. H.B. 1 was unconstitutional on the following grounds: Count I – that the legislative prescription of original jurisdiction in the Supreme Court of Ohio pursuant to Section 3 of Am. Sub. H.B. 1 was unconstitutional; Count II – that the limitation in which to file action contained in Section 3 of Am. Sub. H.B. 1 was unconstitutional; Count III – that the Am. Sub. H.B. 1 is an unconstitutional special act conferring corporate powers; Count IV – that Am. Sub. H.B. 1 violates Section 14, Article III of the Ohio Constitution which prohibits the Governor from holding any other office; Count V – that Am. Sub. H.B. 1 violates Sections 3 and 5, Article VIII of the Ohio Constitution in that JobsOhio can incur debts and create liabilities on behalf of the state; Count VI – that Am. Sub. H.B. 1 violates Section 4, Article VIII of the Ohio Constitution in that the legislation gives, loans, and/or aids the credit of the state to a corporation and the provides for the state to become a joint owner, or stockholder, in a company; and Count VII – that Am. Sub. H.B. 1 violates Section 22, Article II of the Ohio Constitution dealing with appropriations from the state.

3. Thereafter, the Defendants in Ohio Supreme Court Case Number 2011-0622 filed a Motion to Dismiss based upon standing. The Plaintiffs opposed such motion and raised the issue of the constitutionality of Section 3 of Am. Sub. H.B. 1 in that the legislature could not prescribe the original jurisdiction of the Supreme Court of Ohio.

4. On August 19, 2011, the Supreme Court of Ohio in Case Number 2011-0622 issued an Entry and Slip Opinion which declared the legislative prescription of jurisdiction as unconstitutional and dismissed Plaintiffs' action for lack of subject-matter jurisdiction.

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5. Prior to the August 19, 2011, decision of the Supreme Court of Ohio in Case Number 2011-0622, the Ohio General Assembly enacted Am. Sub. H.B. 153, which amended Ohio Rev. Code Sec. 187.01, *et. seq.*, as enacted by Am. Sub. H.B. 1. Such amendments under Am. Sub. H.B. 153 required the Governor to sign and file the articles of incorporation, removed the Governor as being designated the chairperson of the board of JobsOhio, *inter alia*. Am. Sub. H.B. 153 further authorized the state's liquor enterprise to fund JobsOhio

6. This action, which seeks declaratory, injunctive and other relief, is brought pursuant to Revised Code Sections 2721.02 and 2721.03, which allows any person, including a corporation, to bring an action requesting the court issue a declaratory judgment on the constitutionality of a statutory enactment.

## II. JURISDICTION

7. Section 187.09 provides: "(A) Any action brought by or on behalf of JobsOhio against a director or former director in that individual's capacity as a director shall be brought in the court of common pleas of Franklin county.

8. "(B) Except as provided in division (D) of this section, any claim asserting that any one or more sections of the Revised Code amended or enacted by H.B. 1 of the 129th general assembly, any section of Chapter 4313. of the Revised Code enacted by H.B. 153 of the 129th general assembly, or any portion of one or more of those sections, violates any provision of the Ohio Constitution shall be brought in the court of common pleas of Franklin county within ninety days after the effective date of the amendment of this section by H.B. 153 of the 129th general assembly.

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9. “(C) Except as provided in division (D) of this section, 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.

10. “(D) Divisions (B) and (C) of this section shall not apply to any claim within the original jurisdiction of the supreme court or a court of appeals pursuant to Article IV of the Ohio Constitution.

11. “(E) The court of common pleas of Franklin county shall give any claim filed pursuant to division (B) or (C) of this section priority over all other civil cases before the court, irrespective of position on the court's calendar, and shall make a determination on the claim expeditiously. A court of appeals shall give any appeal from a final order issued in a case brought pursuant to division (B) or (C) of this section priority over all other civil cases before the court, irrespective of position on the court's calendar, and shall make a determination on the appeal expeditiously.”

### III. PARTIES

12. Plaintiff ProgressOhio.org (“ProgressOhio”) at all times relevant to the complaint is a 501(c)(4) organization, recognized by the Internal Revenue Service that was created to provide a progressive voice for Ohio citizens. ProgressOhio.org seeks to inform and educate the public about progressive ideals, values and politics in order to provide a more just and democratic society. It has one of its primary goals to ensure that the government follows the dictates of the U.S. and Ohio Constitutions and that the government is accountable for its actions to the citizens of this state. Progress Ohio has 350,000 members statewide.

13. Plaintiff Michael J. Skindell (“Senator Skindell”) at all times relevant to this Complaint is a member of the Ohio Senate from the 23<sup>rd</sup> District and is a citizen and taxpayer of

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the State of Ohio who resides in Lakewood, Cuyahoga County, Ohio. Plaintiff Dennis E. Murray (“Representative Murray”) at all times relevant to this Complaint is a member of the Ohio House of Representatives from the 80<sup>th</sup> District and is a citizen and taxpayer of the State of Ohio who resides in Sandusky, Erie County, Ohio.

14. Plaintiffs have standing to bring this action through the common law and the legislative grant of standing pursuant to Am. Sub. H.B. 1 and Am. Sub. H.B. 153.

15. At all times relevant hereto, Defendant JobsOhio, is a nonprofit corporation created and incorporated pursuant to Ohio Rev. Code Sec. 187.01, *et seq.*, enacted by Am. Sub. H.B. 1, as amended by Am. Sub. H.B. 153 of the 129<sup>th</sup> General Assembly. Defendant JobsOhio is located and principally conducts business in Franklin County, Ohio.

16. Defendant John R. Kasich is Governor of the State of Ohio and Ohio Rev. Code Sec. 187.01, *et seq.*, Am Sub. H.B. 1, as amended by Am. Sub. H.B. 153 of the 129<sup>th</sup> Ohio General Assembly and Ohio Rev. Sec. 187.01, as amended, imposes duties and responsibilities upon him.

17. Defendant Christiane Schmenk at all times relevant hereto is Director of the Ohio Department of Development and Ohio Rev. Code Sec. 187.01, *et seq.*, Am Sub. H.B. 1, as amended by Am. Sub. H.B. 153 of the 129<sup>th</sup> Ohio General Assembly and Ohio Rev. Sec. 187.01, as amended, imposes duties and responsibilities upon her.

18. Defendant Timothy S. Keen at all times relevant hereto is the Director of the Ohio Department of Budget & Management and Ohio Rev. Code Sec. 187.01, *et seq.*, Am Sub. H.B. 1, as amended by Am. Sub. H.B. 153 of the 129<sup>th</sup> Ohio General Assembly and Ohio Rev. Sec. 187.01, as amended, imposes duties and responsibilities upon him.

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19. Defendant Josh Mandel at all times relevant hereto is the Treasurer of the State of Ohio and Am. Sub. H.B. 153 of the 129<sup>th</sup> Ohio General Assembly imposes duties and responsibilities upon him in implementing the functions of JobsOhio.

**COUNT I R.C 187.01 ET SEQ. IS A SPECIAL ACT CONFERRING CORPORATE POWERS IN VIOLATION OF SECTION1, ARTICLE XIII OF THE CONSTITUTION**

20. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

21. Ohio Rev. Code Sec. 187.01 *et. seq.*, as enacted by Am. Sub. H.B. 1 and amended by Am. Sub. H.B. 153 creates the nonprofit corporation JobsOhio. The statute 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. Revised Code Section 187.01 *et. seq.* is a special act conferring corporate powers.

22. Revised Code Section 187.01 exempts JobsOhio from the general laws governing corporations by removing it from the operations of Revised Code Chapter 17: “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.” JobsOhio is not being formed or governed by the general laws of Ohio.

23. Ohio Rev. Code Sec. 187.01, *et. seq.*, enacted by Am. Sub. H.B. 1, as amended, violates Section 1, Article XIII of the Ohio Constitution which prohibits the Generally Assembly from passing any special act conferring corporate powers.

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**COUNT II – R.C. 187.01 ET SEQ. CREATES ONLY JOBSOHIO THEREBY  
VIOLATING SECTION 2, ARTICLE XIII OF THE CONSTITUTION  
REQUIRING THAT ALL CORPORATIONS BE FORMED UNDER THE GENERAL  
LAWS**

24. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

25. The only corporation authorized by Am Sub. H.B. 1 is JobsOhio.

26. Ohio Rev. Code Sec. 187.01, *et. seq.*, enacted by Am. Sub. H.B. 1, as amended, violates Section 2, Article XIII of the Ohio Constitution which requires that corporations be formed under general laws.

**COUNT III – R.C. 187.01 ET SEQ. VIOLATES  
SECTION 4, ARTICLE VIII OF THE OHIO CONSTITUTION  
PROHIBITING THE STATE FROM MAKING EQUITY INVESTMENTS**

27. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

28. Revised Code Section 187.01, Am. Sub. H.B. 1, as amended, creates a corporation called JobsOhio and provides for subsidiaries of that corporation. Section 5 of Am. Sub. H.B. 1 also provides for an appropriation stating: “The Director of Development, in consultation with the Director of Budget and Management, shall find within the Department of Development's total unexpended and unencumbered fiscal year 2011 General Revenue Fund appropriation an amount not to exceed \$1,000,000 in order to establish and operate the JobsOhio corporation established in Chapter 187. of the Revised Code. The Director of Development shall identify appropriation items within the General Revenue Fund that are to be reduced for this purpose, and any reduction in appropriations to these items pursuant to this section shall not collectively exceed \$1,000,000. The amounts identified by the Director are hereby appropriated in General Revenue Fund appropriation item 195527, JobsOhio, for transition and start-up costs

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of the JobsOhio corporation. Nothing in this section shall be construed as increasing or decreasing the Department of Development's total fiscal year 2011 General Revenue Fund appropriation.”

29. Ohio Rev. Code Sec. 187.01, *et. seq.*, enacted by Am. Sub. H.B. 1, as amended, creates a joint venture between the State of Ohio and JobsOhio and/or its subsidiaries and makes the State of Ohio a stockholder of JobsOhio and/or its subsidiaries. Under the provisions of Ohio Rev. Code Sec. 187.01, *et. seq.*, enacted by Am. Sub. H.B. 1, as amended, the credit of the State of Ohio is being given or loaned to JobsOhio and/or its subsidiaries. The consideration received by the State of Ohio is disproportionate to the obligations undertaken by the State of Ohio.

30. The articles of incorporation for JosbOhio provide that it may exercise all of powers that may be conferred upon nonprofit corporations formed under Chapter 187 and Chapter 1702 of the Ohio Revised Code. Chapter 1702 states that nonprofit corporations may be formed for which natural persons may lawfully associate themselves. Among these purposes are any number and manner of investments in the equity of private companies. Governor Kasich and members of his administration have repeatedly stated before committees of the General Assembly, to the media and in other public forums that they intend to make equity investments in private companies through JobsOhio and to otherwise accept any number and manner of investments in private companies in exchange for a variety of different types of state assistance made to such companies. Such investments do not involve commingling but instead providing value, whether cash or by other means, in exchange for an asset, namely an equity position.

31. Ohio Rev. Code Sec. 187.01, *et. seq.*, enacted by Am. Sub. H.B. 1, as amended, violates Section 4, Article VIII of the Ohio Constitution which provides that “[t]he credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or



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corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

**COUNT VI –H.B. 187.09 VIOLATES SECTION 16, ARTICLE VI OF THE OHIO CONSTITUTION BY REQUIRING THAT COURTS BE OPEN SO THAT INJURED PARTIES MAY OBTAIN A REMEDY BY DUE PROCESS**

32. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

33. Revised Code Section 187.07(F) does not require any disclosures of investments during the fiscal year, but instead requires only that a report be filed on the first day of March of each year regarding the JobOhio’s activities for the preceding year.

34. Revised Code Section 187.09(C) provides that “any claim asserting that an action taken by JobsOhio violates any provision of the Ohio Constitution shall be brought in the Court of Common Pleas of Franklin County within 60 days after the action is taken.” The application of the discovery rule, by which a statute of limitations may be tolled or extended in the State of Ohio, “has been limited to applications for medical and legal malpractice and actions for bodily injury or injury to personal property, and courts have declined to extend the rule unless it is specifically incorporated into a statute.” *Marok v. The Ohio State University*, 2011 Ohio 4837 at \*\*2 (Court of Claims July 25, 2011), citing *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 181 (1989). Revised Code Section 187.09(C) does not expressly provide a statute of limitations.

35. Because Revised Code Section 187.07(F) permits JobsOhio to not disclose its investments until the first of March of the following year and further because the 90 day state of limitations provided by Revised Code Section 187.09(C), means that the statute of limitations on an action challenging the constitutionality of JobsOhio’s activities would run before the public know about those activities, Am. Sub. H.B. 1 violates Ohio’s Bill of Rights, specifically Article I

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Section 16 which provides that “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”

**COUNT V –**  
**R.C. 4313.01 ET SEQ VIOLATES SECTION 22, ARTICLE II OF THE OHIO**  
**CONSTITUTION BY PROVIDING AN APPROPRIATION FOR JOBSOHIO**  
**THAT EXTENDS FOR MORE THAN TWO YEARS**

36. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

37. Revised Code Section 4313.02(A) authorizes an enterprise acquisition project, defined by Section 4313.01(A) to mean all assets of the spirituous liquor distribution and merchandising operations of the division of liquor control, to be transferred to JobsOhio for a period not to exceed 25 years. With this transfer, the state of Ohio still maintains a reversionary interest in the enterprise acquisition project..

38. Any such reversionary interest includes the payment of liabilities incurred by JobsOhio and the payment of debt to retire any and all bonds issued by or for JobsOhio.

39. Revised Code Section 4313.02(B) provides that the proceeds of any transfer under Division A may be expended for: 1) repayment or defeasance of any bonds secured by liquor profits, 2) deposit into the General Revenue Fund, 3) deposit into one or more different economic development funds, including the clean Ohio revitalization fund, the research and development fund, the logistics and distribution infrastructure fund, the advanced energy research and development fund, and the advanced energy research and development tactical fund; and 4) conveyance to JobsOhio.

40. Revised Code Section 4313.07(C)(2) provides that the Director of Budget and Management, in consultation with the Director of Commerce may, without need for any other

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approval, negotiate a transfer agreement necessary to effect a transfer and acceptance of the enterprise acquisition project to JobsOhio for a transfer price payable by JobsOhio to the State of Ohio .

41. Pursuant to Section 801.30 of Am. Sub. H.B. 153, the Governor and the General Assembly assume the receipt of \$500,000,000 from JobsOhio pursuant to Section 4313.02 and the transfer of enterprise acquisition project revenues authorized therein.

42. Section 22, Article II of the Ohio Constitution prohibits the General Assembly from making an appropriation effective for more than two years.

43. By transferring all assets of the spirituous liquor distribution and merchandising operations of the division of liquor control to JobsOhio for a period not to exceed 25 years and further permitting funds from that transfer project to be used for the purposes set forth in Revised Code Section 4313.02(B), this statute violates Section 22, Article II of the Ohio Constitution by authorizing an appropriation for more than two years.

**COUNT VI – R.C. 4313.01 ET SEQ VIOLATES SECTION 2h, ARTICLE VIII OF THE OHIO CONSTITUTION BY AUTHORIZING THE STATE TO EXCEED ITS BOND LIMIT**

44. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

45. Revised Code Section 4313.02(A) limits any transfer of the liquor assets to a period of twenty-five years and specifically retains an reversionary interest in the assets, requiring that "[a]ny transfer of the enterprise acquisition project that is an assignment and sale, conveyance, or other transfer shall contain a provision that the state shall have the option to have conveyed or transferred back to it, at no cost, the enterprise acquisition project, as it then exists,

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no later than twenty-five years after the original transfer authorized in the transfer agreement on such other terms as shall be provided in the transfer agreement.”

46. 4313.02(A) nonetheless also engages in double-speaking, providing that “[a]ny such transfer [of the liquor assets] shall be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project purported to be conveyed for all purposes, and not as a pledge or other security interest. The characterization of any such transfer as a true sale and absolute conveyance shall not be negated or adversely affected by the acquisition or retention by the state of a residual or reversionary interest in the enterprise acquisition project, the participation of any state officer or employee as a member or officer of, or contracting for staff support to, JobsOhio or any subsidiary of JobsOhio, any regulatory responsibility of an officer or employee of the state, including the authority to collect amounts to be received in connection therewith, the retention of the state of any legal title to or interest in any portion of the enterprise acquisition project for the purpose of regulatory activities, or any characterization of JobsOhio or obligations of JobsOhio under accounting, taxation, or securities regulations, or any other reason whatsoever. An absolute conveyance and true sale or lease shall exist under this section regardless of whether JobsOhio has any recourse against the state or the treatment or characterization of the transfer as a financing for any purpose. Upon and following the transfer, the state shall not have any right, title, or interest in the enterprise acquisition project so transferred other than any residual interest that may be described in the transfer agreement pursuant to the following paragraph and division (D) of this section.

47. Section 2h, Article VIII of the Constitution permits the State to borrow no more than two hundred ninety million dollars and issue bonds or other obligations thereof for defined purposes including economic development.

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48. Pursuant to Section 801.30 of Am. Sub. H.B. 153, the Governor and the General Assembly assume the receipt of \$500,000,000 from JobsOhio pursuant to Section 4313.02 and the transfer of enterprise acquisition project revenues authorized therein.

49. The assets of the spirituous liquor distribution and merchandising operations of the division of liquor control do not and never have generated \$500,000,000. Instead, the State and JobsOhio plan to sell bonds using those assets and/or the revenues from those assets as collateral.

50. R.C. 4313.01 et seq. is an attempt to subvert the debt limitations imposed by the Constitution by purporting to transferring assets belonging to the State when the State is in fact retaining a reversionary interest in and continuing to operate those assets pursuant to a contract authorized by Revised Code Section 4131.02(E).

**COUNT VII – R.C. 4313.01 ET SEQ VIOLATES SECTION 4, ARTICLE VIII OF THE OHIO CONSTITUTION**

51. Plaintiffs restate and reallege each and every preceding paragraph as if fully rewritten herein.

52. R.C. 4313.01 et seq. is an attempt to subvert the extension of state credit limitations imposed by the Constitution by purporting to transfer assets belonging to the State, when the State is in fact retaining a reversionary interest in and continuing to operate those assets pursuant to a contract authorized by Revised Code Section 4131.02(E).

53. Because the state retains an interest in the assets, and is actually managing the enterprise for JobsOhio, the bonds being issued by or on behalf of JobsOhio constitute giving or loaning the credit of the state to a private corporation in violation of Section 4 Article 8 of the Ohio Constitution.

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**WHEREFORE**, Plaintiffs pray:

1. For a declaration that Ohio Rev. Code Sec. 187.01, *et. seq.*, enacted by Am. Sub. H.B. 1, as amended, contravenes the Constitution of the State of Ohio;
2. For a declaration the Ohio Rev. Code Sec. 4313.01 et seq. contravenes the Constitution of the State of Ohio.
3. For Injunctive Relief prohibiting the formation and continued operation of JobsOhio; prohibiting the Director of the Ohio Department of Development from contracting with JobsOhio; and prohibiting the Directors of the Ohio Department of Development and Ohio Office of Budget & Management from making any appropriation to JobsOhio; prohibiting the Treasurer of the State from exercising his responsibilities under Am. Sub. H.B. 1, as amended, and Am. Sub. H.B.153, or any additional responsibilities provided by law pertaining to JobsOhio.
4. For their reasonable attorney's fees and costs and any and all other relief which this Court may deem appropriate.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this amended complaint was served by all defendants' counsel by email on November 14, 2011.

/s/ Victoria E. Ullmann

Victoria E. Ullmann  
Attorney at law