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

ProgressOhio.org, Inc., et al, <div style="text-align: center;">Plaintiffs,</div> <div style="text-align: center;">v.</div> JobsOhio, et al., <div style="text-align: center;">Defendant.</div>	: : : : : : : : : :	 Case No. 11 CVH08 10807 Judge Beatty
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DECISION GRANTING STATE DEFENDANTS' MOTION TO DISMISS

DECISION GRANTING DEFENDANT JOBSOHIO'S MOTION TO DISMISS

**ENTRY DENYING IN PART PLAINTIFF PROGRESSOHIO.ORG'S
MOTION TO STRIKE**

This matter came before the Court on two motions to dismiss filed by Defendants Governor John R. Kasich, Ohio Department of Development Director Christiane Schmenk, Office of Budget & Management Director Timothy S. Keen, and Treasurer Josh Mandel (collectively "State Defendants") and JobsOhio. Plaintiff ProgressOhio.org ("ProgressOhio") also filed a Motion to Strike Defendants' supplemental briefs on their motions to dismiss. For the following reasons, the Court GRANTS Defendants' motions and DENIES IN PART ProgressOhio's Motion.

I. BACKGROUND

Plaintiffs are ProgressOhio, an organization "created to provide a progressive voice for Ohio citizens," Ohio Senator Michael Skindell, and Ohio House Representative Dennis E. Murray. (Complaint at ¶¶7-8.) Plaintiffs filed a Complaint for Declaratory Judgment and Injunctive Relief on August 29, 2011 against JobsOhio, a non-profit organization, and the State Defendants related to legislation that allows Ohio's Governor to create a nonprofit corporation

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for the purpose of promoting economic development in Ohio. That legislation was enacted through Amended Substitute House Bill No. 1 (“H.B. 1”) and was amended through Amended Substitute House Bill No. 153 (“H.B. 153”). Plaintiffs filed their First Amended Complaint (“Complaint”) on November 16, 2011.

H.B. 1 and H.B. 153 (collectively the “JobsOhio Act”) amend a number of Ohio statutes. H.B. 1 also enacts Revised Code Sections 187.01 to 187.12. R.C. 187.01 provides for the formation of JobsOhio and outlines the purpose of the corporation, stating: “The governor is hereby authorized to form a nonprofit corporation, to be named “JobsOhio,” with the purposes of promoting economic development, job creation, job retention, job training, and the recruitment of business to this state.” It mandates that Ohio’s governor sign and file the articles of incorporation and appoint nine directors to the JobsOhio board of directors.

A. Plaintiff’s Allegations

Plaintiffs allege that parts of the JobsOhio Act, specifically R.C. 187.07 et seq. and R.C. 4313.01 et seq., are unconstitutional on a number of grounds. In Counts I and II of their Complaint, Plaintiffs allege that R.C. 187.07 et seq. is unconstitutional because it exempts JobsOhio from many general state laws governing corporations, in violation of Sections 1 and 2 of Article XIII of the Ohio Constitution that prohibit the General Assembly from passing a “special act conferring corporate powers” and provide that corporations “may be formed under general laws.” Sections 1 and 2, Article XIII, Ohio Constitution, respectively.

In Count III, Plaintiffs allege that R.C. 187.01, in conjunction with Section 5 of H.B. 1, is unconstitutional because it permits the State to make equity investments into JobsOhio and makes the State a shareholder in JobsOhio in contravention of Section 4, Article VIII of the Ohio Constitution. Section 5 of H.B. 1 directs the “Director of Development, in consultation with the

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Director of Budget and Management,” to “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.” Section 4, Article VIII of the Ohio Constitution provides that the “credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or 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.”

In Count IV¹ of the Complaint, Plaintiffs allege that R.C. 187.09 is unconstitutional because it prevents parties from challenging in court the actions taken by JobsOhio. R.C. 187.09(C) provides that any constitutional challenge to an action taken by JobsOhio must be brought within sixty days after the action was taken. R.C. 187.07(F), however, only requires JobsOhio to disclose investments once a year, in March. Thus, Plaintiffs argue that JobsOhio may take an action that is unconstitutional that will not be disclosed until after the sixty-day limitations period. Plaintiffs argue that this provision violates Section 16, Article I of the Ohio Constitution, which provides that “[a]ll 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.”

In Count V, Plaintiffs allege that various sections of R.C. 4313 are unconstitutional because they transfer assets of liquor distribution and merchandising operations from the Division of Liquor Control to JobsOhio for up to twenty-five years. Plaintiffs argue that this constitutes a multi-year appropriation that violates Section 22, Article II of the Ohio Constitution, which provides that “No money shall be drawn from the treasury, except in

¹ The Complaint identifies this as Count VI, however it is the fourth count in the Complaint.

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pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.”

In Count VI, Plaintiffs allege that R.C. 4313.02(A) is unconstitutional because it authorizes the State to exceed its bond limits. Section 2h, Article VIII of the Ohio Constitution allows the State to “borrow not to exceed two hundred ninety million dollars and issue bonds or other obligations thereof” for a number of purposes related to economic development. Plaintiff alleges that the JobsOhio Act authorizes the State to sell or lease to JobsOhio the State’s liquor operations, thereby giving JobsOhio the right to the revenue collected for liquor distribution. In order to finance the purchase or lease of the State’s liquor operations, though, Plaintiffs allege that “the State and JobsOhio plan to sell bonds using [liquor] assets and/or revenues.” (Complaint at ¶50.) Plaintiffs allege that the State and JobsOhio would need to sell bonds in excess of the debt limitations imposed by Section 2h, Article VIII of the Ohio Constitution.

In their final claim, Plaintiffs allege that R.C. 4313.01 et seq., the portion of the JobsOhio Act that authorizes the State to sell or lease to JobsOhio the State’s liquor operations, violates Section 4, Article VIII of the Ohio Constitution. (Complaint, Count VII.) As previously stated, Section 4 prohibits the State from giving or loaning credit to a private corporation. Plaintiffs allege that R.C. 4313.01 allows the State to retain a reversionary interest in liquor operations and continue to operate liquor operations pursuant to a contract authorized by R.C. 4131.02(E). According to Plaintiffs, the State’s retention of some interest and control in the liquor operations sold or leased to JobsOhio constitutes the giving or loaning of credit to a private corporation. (Complaint at ¶53.)

Plaintiffs seek a declaration that the JobsOhio Act is unconstitutional. Plaintiffs also seek injunctive relief to prevent the operation of JobsOhio and prohibit various government officials

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from taking actions outlined in the JobsOhio Act. Plaintiffs allege that they have standing to bring their action “through the common law and the legislative grant of standing pursuant to Am. Sub. H.B. 1 and Am. Sub. H.B. 153.” (Complaint at ¶9.) Plaintiffs also allege that R.C. 2721.02 and 2721.03, Ohio’s Declaratory Judgment Act, “allows any person, including a corporation to bring an action requesting the court issue a declaratory judgment on the constitutionality of a statutory enactment.” (Complaint at ¶6.)

B. Supreme Court Proceedings

Before filing their action in this Court, Plaintiffs filed their action in the Supreme Court of Ohio, pursuant to Section 3 of H.B. 1. See Supreme Court Case No. 2011-0622. Section 3 of H.B. 1 purported to grant the Supreme Court of Ohio “exclusive, original jurisdiction” over any constitutional claim related to H.B. 1. Plaintiffs challenged Section 3 as unconstitutional. The Supreme Court of Ohio dismissed the action after finding that it lacked original jurisdiction to hear the action under the Constitution and that the legislature could not expand the Court’s original jurisdiction through a statute. *ProgressOhio.org v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101. The Court did, however, state that an amendment to the statute, Am.Sub.H.B. 153 “provide[s] a remedy for petitioners to institute an action challenging the constitutionality of amended R.C. 187.01 et seq. by way of an action in the Franklin County Court of Common Pleas.” *ProgressOhio.org*, 2011-Ohio-4101 at ¶6. Plaintiffs named the State Defendants in their action before the Supreme Court but did not list JobsOhio, which had not yet been formally created, as a defendant in that action.

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C. Defendants' Motions to Dismiss

After the Supreme Court dismissed Plaintiffs' Complaint, Plaintiffs filed their action in this Court. Plaintiffs added JobsOhio as a defendant. Defendants responded to the Complaint by filing two motions to dismiss, one on behalf of the State Defendants and one from JobsOhio.²

1. State Defendants' Motions to Dismiss

In their motion to dismiss, filed September 30, 2011, the State Defendants argue that Plaintiffs' Complaint should be dismissed because Plaintiffs lack standing to bring their action and Plaintiffs' claims are not ripe. (See State Defendants' Motion to Dismiss ("State Defendants' Mtn. Dismiss").)

The State Defendants argue that Plaintiffs lack standing because they have not suffered or been threatened with a "direct and concrete injury in a manner or degree different from that suffered by the public in general." (State Defendants' Mtn. Dismiss at 3, citing *Cuyahoga Cty. Bd. of Commrs. v. Ohio*, 112 Ohio St.3d 59, 2006-Ohio-6499, at ¶22.) According to the State Defendants, a personal, direct and concrete injury is necessary where a plaintiff claims standing based upon citizenship, and an association may only have standing if its members have suffered an actual injury. (Id. at 3-4.) Plaintiffs' disagreement with the JobsOhio Act is not sufficient to confer standing, the State Defendants argue.

The State Defendants further argue that Plaintiffs lack taxpayer standing because they have not shown a "special interest" different from that of taxpayers generally. (State Defendants' Mtn. Dismiss at 5, citing *State ex rel. Masterson v. Ohio State Racing Comm.* (1954), 162 Ohio St. 366, 368, 123 N.E.2d 1.) The State Defendants argue that merely paying taxes does not confer standing to challenge a general revenue expenditure. (Id.)

² Although both motions to dismiss were filed before Plaintiffs filed their Amended Complaint, the parties agreed that the motions to dismiss would apply to the Amended Complaint. (See Nov. 17, 2011 Case Scheduling Order.)

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As to Plaintiffs Skindell and Murray, the State Defendants argue that they lack standing as state legislators because legislator standing exists only where a legislator has been “prevented from casting an effective vote.” (Id. at 7, citing *State ex rel. Ohio General Assembly v. Brunner* 114 Ohio St.3d 386, 2007-Ohio-3780, at ¶19.) Here, Plaintiffs Skindell and Murray voted against the JobsOhio Act. There are no allegations in the Complaint to suggest that the legislators’ votes were not counted.

The State Defendants next argue that no state statute confers standing on Plaintiffs. (Id. at 8.) In their Complaint, Plaintiffs allege that they have standing under, *inter alia*, “Am. Sub. H.B. 1 and Am. Sub. H.B. 153.” (Complaint at ¶9.) The State Defendants presume that Plaintiffs rely upon R.C. 187.09 to confer standing. (State Defendants’ Mtn. Dismiss at 8.) R.C. 187.09 provides that any claim asserting that any portion of the JobsOhio Act is unconstitutional “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.” The State Defendants argue that this provision merely provides a venue and statute of repose but does not confer standing upon anyone. (Id.) According to the State Defendants, common law standing requirements still apply.

The State Defendants contend that in order to have standing under the Declaratory Judgment Act, R.C. 2721.02 et seq., a party must be “legally affected” or have a real justiciable controversy in order to have standing to bring a declaratory judgment action. (Id. at 9, quoting *Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263, 273, 328 N.E.2d 395.) According to the State Defendants, Plaintiffs cannot identify a legal right or interest that is affected by the JobsOhio Act; therefore, Plaintiffs lack standing to bring a declaratory judgment claim. (Id.)

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In addition to arguing that Plaintiffs lack standing to bring their claim, the State Defendants argue that Plaintiffs' action must be dismissed because Plaintiffs' claims are not ripe for resolution. (Id. at 10.) The State Defendants contend that Plaintiffs' claims are premature because Plaintiffs make allegations regarding "future, hypothetical events that may not ever occur." (Id. at 11.) As an example, the State Defendants argue that no provision of the JobsOhio Act mandates that the State must make equity investments into a private enterprise as Plaintiffs allege the State *intends* to do.

2. JobsOhio's Motion to Dismiss

Defendant JobsOhio filed its motion to dismiss on October 3, 2011. JobsOhio argues that Plaintiffs' Complaint must be dismissed because Plaintiffs lack standing. JobsOhio also contends that Count II of Plaintiff's Complaint is not ripe for judicial resolution. (JobsOhio's Motion to Dismiss ("JobsOhio's Mtn. Dismiss") at 2.) JobsOhio makes many of the same arguments as the State Defendants do in their motion to dismiss. The Court will not repeat the duplicative arguments but will summarize new or additional arguments JobsOhio raises.

As to whether ProgressOhio has associational standing, JobsOhio contends that ProgressOhio cannot meet any of the three requirements to have associational standing: 1) its members would have standing to sue on their own; 2) it seeks to protect an interest relevant to its collective purpose; and 3) neither the claim nor the relief sought requires participation by any individual members. (Id. at 7, citing *Ohio Trucking Ass'n v. Stickrath*, 10th Dist. No. 10AP-673, 2011-Ohio-4361, at ¶14.) JobsOhio argues that ProgressOhio has not alleged and cannot show that any of its members have suffered any judicially-cognizable injury that is different from that suffered by the general public. (Id. at 7.)

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Furthermore, JobsOhio argues that ProgressOhio has not alleged that the JobsOhio Act is germane to its interests, which is to “inform the public about progressive ideals in order to provide a more just and democratic society,” and “ensure that the government follows the dictates of the U.S. and Ohio Constitutions.” (Id. at 8; Complaint at ¶12.) JobsOhio contends that the JobsOhio Act does not interfere with ProgressOhio’s interests in informing and educating the public, and its goal of ensuring the government follows the constitution is so general that it would eviscerate all associational standing standards if allowed to provide a basis for standing. (JobsOhio’s Mtn. Dismiss at 8.) Finally, because there is no direct harm to any individual ProgressOhio member, JobsOhio argues that the Court cannot even analyze the third requirement for associational standing. (Id. at 8.)

Responding to any claim of taxpayer standing, JobsOhio additionally argues that the JobsOhio Act does not create any new tax expenditure because the money comes from amounts already allocated to the Department of Development. (Id. at 9.) Thus, Plaintiffs do not have standing as taxpayers.

In addition to the State Defendants’ arguments as to why R.C. 187.09 does not confer statutory standing to Plaintiffs, JobsOhio points to a number of other cases and statutes which it argues shows that Ohio requires a statutory abrogation of common law standing rules to expressly identify the categories of plaintiffs who have standing. (Id. at 11.) R.C. 187.09 does not explicitly identify any particular plaintiff or class of plaintiff upon whom it confers standing.

JobsOhio also addresses whether a “public right” exception to the common law standing requirements may apply to Plaintiffs’ action. According to JobsOhio, standing based upon “public right” may be found without an injury where “the issues sought to be litigated are of great importance and interest to the public.” (Id. at 12, quoting *State ex rel. Ohio Academy of*

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Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, 471, 715 N.E.2d 1062.) JobsOhio contends that this exception is very limited and applies only to actions in mandamus and/or prohibition, which Plaintiffs' action is not. (Id.)

Finally, JobsOhio argues that Count II of Plaintiff's Complaint is not ripe for judicial resolution. (Id.) Applying a three-factor ripeness test, JobsOhio contends that the likelihood of alleged future harm is speculative because the structure of JobsOhio's future transactions is unknown such that it is premature to assume that they will be unconstitutional. (Id. at 14.) JobsOhio also argues that a delay would not cause hardship because an action could be brought after an actual transaction has occurred and its details become known. (Id. at 14-15.) JobsOhio also argues that the factual record is not sufficiently developed to allow resolution of the issue because the structure and form of JobsOhio transactions has not yet been determined. JobsOhio contends that the details of any particular transaction must be known before the Court can assess the constitutionality of the transaction. (Id. at 15.)

D. Plaintiffs' Memorandum Contra

Plaintiffs filed their Memorandum Contra to Defendants' two motions to dismiss on October 14, 2011. Plaintiffs devote a large portion of their Memorandum Contra to arguing why the JobsOhio Act is unconstitutional. Relevant to Defendants' motions to dismiss, however, Plaintiffs contend that they have standing to bring their action "pursuant to the legislative grant under R.C. 187.09 and under the common law." (Memo. Contra at 3.) In support of their statutory standing argument, Plaintiffs contend that R.C. 187.09(B)'s language providing that "any [constitutional claim] shall be brought in the court of common pleas of Franklin county within ninety days" clearly "confers standing for public interest suits." (Id. at 7.) Therefore,

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Plaintiffs contend that the statute dispenses of any requirements that they show an actual injury in order to have standing. (Id.)

Plaintiffs further argue that the Supreme Court of Ohio “implied” that Plaintiffs have standing here in its decision in the previous related action wherein it stated that Am.Sub.H.B. 153 “provide[s] a remedy for petitioners to institute an action challenging the constitutionality of amended R.C. 187.01 et seq. by way of an action in the Franklin County Court of Common Pleas.” (Id. at 7, quoting *ProgressOhio.org*, 2011-Ohio-4101 at ¶6.)

As to Plaintiffs Skindell and Murray, Plaintiffs argue that the two plaintiffs have legislator standing. Although Plaintiffs acknowledge that legislator standing typically applies only to cases of voter nullification, Plaintiffs contend that state courts need not adhere to such strict standards in analyzing legislator standing. (Id. at 8.) Instead, Plaintiffs contend that the plaintiff legislators have standing because they suffer a specific injury as a result of the JobsOhio Act. (Id. at 8-9.) Plaintiffs contend that the JobsOhio Act obligates state money for more than two years, despite the Ohio Constitution’s limitation on appropriations to two years. (Id., citing Section 22, Article II of the Ohio Constitution.) Therefore, Plaintiffs contend that the JobsOhio Act prevents the plaintiff legislators from exercising their rights and duties to appropriate money. (Id. at 9.)

Finally, Plaintiffs argue that they have standing as “citizens and taxpayers” to challenge the JobsOhio Act because it is a matter of “great public interest.” (Id. at 10.) Plaintiffs contend that because the JobsOhio Act is of such great public interest, they have standing under the “public right” standing doctrine and do not need to show any individual injury. Plaintiffs contend that “public right” standing is not as limited as JobsOhio contends and may be applied to their circumstances.

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Responding to Defendants' ripeness arguments, Plaintiffs contend that the matter is ripe for review because "JobsOhio has already been allocated a one million-dollar appropriation" in Section 5 of H.B. 1. (Id. at 12.) Plaintiffs contend that this provision immediately violates the Constitution's prohibition against joint ventures, making their action ripe. Plaintiffs further contend that it is not possible to wait until a specific transaction has occurred to find a challenge ripe, as Defendants contend, because the JobsOhio Act only requires JobsOhio to report its investments once a year, and the statute requires that all claims be brought within sixty days of an action being taken. Under this statutory scheme, Plaintiffs contend that they will not necessarily know that a transaction has occurred until JobsOhio is required to report it, which may be more than sixty days after the transaction occurred. Plaintiffs thus urge that if their action is not currently ripe, the statute of limitations contained in the JobsOhio Act must be unconstitutional because it is an illusory remedy. (Id. at 13.)

E. Defendants' Reply Briefs

On October 24, 2011, the State Defendants and JobsOhio filed separate replies in support of their motions to dismiss. In response to Plaintiffs' contention that R.C. 187.09(B) confers standing upon them, both the State Defendants and JobsOhio argue that a statutory grant of standing must be explicit. They contrast the language in R.C. 187.09(B) with other statutes that have standing provisions to show that such provisions are explicit in defining who has standing to bring an action. (State Defendants' Reply at 2-3; JobsOhio's Reply at 3-4.) Defendants continue to argue that the language in R.C. 187.09(B) does not give Plaintiffs standing.

The State Defendants further argue that Defendants Skindell and Murray do not have legislator standing because Plaintiffs cannot prove a constitutional violation has occurred that will cause the specific injury Plaintiffs allege and no legal authority provides for legislator

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standing in this context. (State Defendants' Reply at 4-5.) JobsOhio reiterates its previous argument that legislator standing is limited to cases in which the legislator has been prevented from casting an effective vote. (JobsOhio's Reply at 5-6.) JobsOhio further urges that public policy cautions against expanding legislator standing as Plaintiffs request because it would allow legislators to challenge any spending bill they vote against. (Id. at 6.)

Responding to Plaintiffs' claim of "public right" standing, the State Defendants argue that Plaintiffs cannot meet the high requirements to dispose of a personal injury and confer standing based upon public interest. The State Defendants contend that, under *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062, "public right" standing may only exist where "the challenged statute operates, *directly and broadly, to divest the courts of judicial power,*" and where the action is for an extraordinary writ such as actions in mandamus and prohibition. (State Defendants' Reply at 6, quoting *Sheward*, 86 Ohio St.3d at 504 (emphasis in original).) Plaintiffs do not allege that the JobsOhio Act divests the Court of judicial power, and Plaintiffs are not seeking an extraordinary writ. Further, according to the State Defendants, the circumstances present here are not so "rare and extraordinary" as to invoke "public right" standing.

JobsOhio also disputes Plaintiffs' contention that the Supreme Court has already implied that Plaintiffs have standing in this action. Instead, JobsOhio argues that the Supreme Court's previous decision addressed only whether the Court had original jurisdiction over the matter. The Court's reference to bringing an action in this Court, JobsOhio contends, was dicta and merely identified the venue where Plaintiffs could institute an action, not that Plaintiffs have standing to maintain an action. (JobsOhio's Reply at 4.)

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Finally, JobsOhio maintains that Plaintiffs' second claim is not ripe. Responding to Plaintiffs' argument that an appropriation has already been made, JobsOhio argues that such appropriation was like a "grant," not an investment, purchase, or loan, and cannot, therefore, be considered an unconstitutional joint venture. (Id. at 7.) Further, JobsOhio contends that Plaintiffs' argument that the JobsOhio Act does not provide enough time to challenge a particular action is based upon a flawed understanding of JobsOhio. JobsOhio argues that its annual reporting is not necessarily the only avenue through which Plaintiffs would learn about the corporation's activities. (Id.) Even if it were, however, JobsOhio contends that a party could presumably argue that the annual report triggers the statute of limitations, not just the date on which the underlying action was taken. (Id.)

F. Defendants' Supplemental Replies to Plaintiffs' Amended Complaint

Plaintiffs filed their Amended Complaint, which included five new claims against Defendants, after Defendants' two motions to dismiss were fully briefed. Nonetheless, the parties agreed that Defendants' motions would apply to the Amended Complaint. (See Nov. 17, 2011 Case Scheduling Order.) Defendants, however, requested an opportunity to supplement their reply briefs to respond to the additional claims included in Plaintiffs' Amended Complaint, which the Court granted. (See Nov. 17, 2011 Case Scheduling Order.) Defendants filed their supplements to their motions to dismiss on November 21, 2011.

The State Defendants argue that Plaintiffs' additional claims do not provide a basis for standing as they do not allege any new facts that would support standing here. The State Defendants also argue that ProgressOhio's discovery responses contain admissions that it has not suffered any actual injury; therefore admitting that it does not have standing. (State Defendants' Supplement to Motion to Dismiss ("State Defendants' Supplement") at 2.) The State Defendants thus incorporate their arguments from their original motion as the basis for dismissing this action.

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JobsOhio states that the basis for its supplement stems primarily from an email from ProgressOhio's counsel, which JobsOhio alleges contains a concession that the organization has not sustained any particularized harm. (JobsOhio's Supplemental Filing in Support of Its Motion to Dismiss ("JobsOhio's Supplement") at 1.) Like the State Defendants, JobsOhio contends that Plaintiffs' Amended Complaint does not include anything new that would provide a basis for Plaintiffs to have standing here. (Id. at 2.) JobsOhio thus summarizes some of the arguments in its Motion to Dismiss to reiterate its contention that Plaintiffs lack standing to pursue their claims.

G. Plaintiff ProgressOhio's Motion to Strike

On November 29, 2011³, ProgressOhio filed a Motion to Strike Defendants' Supplemental Memorandum and Objections to Defendants' Misstatement of the Record in this Case. ProgressOhio contends that Defendants' supplements should be stricken because they simply repeat previous arguments. (Motion to Strike at 1.) ProgressOhio also alleges that Defendants' supplements include material misrepresentations to which ProgressOhio objects. (Id.) ProgressOhio asserts that "Plaintiffs claim public interest standing as taxpayers," and Plaintiffs have never alleged individual harm. (Id. at 2-3.) ProgressOhio claims that "plaintiffs' arguments have been focused on public interest standing." (Id. at 2.) ProgressOhio goes on to argue that "this is a taxpayer suit and standing is based on the common law rules concerning taxpayer suits litigating issues considered to be of great public interest and concern and on 187.09 itself." (Id. at 3.) Although ProgressOhio requests that the Court strike Defendants' supplements as merely repetitive of their previous filings, ProgressOhio moves alternatively to "allow a continuing objection to defendants misrepresentations on the record." (Id. at 3.) Because the Court allowed Defendants to file supplemental materials after Plaintiffs amended

³ Although the Motion to Strike was not formally filed until November 29, 2011, the Motion was sent to the parties and the Court before the November 23, 2011 Hearing. Based upon counsel for ProgressOhio's representation, the Motion to Strike was treated as though it had already been filed before the Hearing.

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their complaint, the Court **DENIES** ProgressOhio's Motion to Strike Defendants' supplemental materials. The Court, however, **GRANTS** ProgressOhio's alternative request and allows a continuing objection to Defendants' alleged misstatements.

H. Hearing

On November 23, 2011, this Court held a hearing on the record on Defendants' motions to dismiss. The Court permitted the parties time to argue for or against the pending motions to dismiss, after which point the Court asked the parties questions to clarify their arguments on the motions. At the hearing, Plaintiffs stated that two bases upon which they all seek standing are through "public right" standing and statutory standing under the JobsOhio Act. The legislator plaintiffs also assert that they have legislator standing. Following the hearing, the Court took the parties arguments under advisement in conjunction with all briefing on the motions to dismiss.

Defendants' motions to dismiss are now before the Court.

II. MOTION TO DISMISS STANDARD

Both JobsOhio and the State Defendants filed their motions to dismiss pursuant to Civ.R. 12(B)(1) and 12(B)(6). Civ.R. 12(B)(1) provides that a claim may be dismissed if the Court lacks subject matter jurisdiction over the claim. The Court must determine "whether the plaintiff has alleged any cause of action cognizable by the forum." *Avco Financial Services Loan, Inc. v. Hale* (1987), 30 Ohio App.3d 65, 67, 520 N.E.2d 1378. In analyzing a motion to dismiss pursuant to Civ.R. 12(B)(1), a court is not required to presume that the allegations in the complaint are true, and it is not confined solely to the allegations in the complaint. *DiFranco v. First Energy*, 8th Dist. No. 2010-G-2990, 2011-Ohio-5434, ¶20 (citations omitted).

Civ.R. 12(B)(6), on the other hand, tests the sufficiency of the claims asserted in a complaint. Dismissal of a complaint pursuant to Civ.R. 12(B)(6) is appropriate only where it

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appears beyond a doubt from the complaint that the plaintiff can prove no set of facts in support of the claim at issue that would entitle him to relief. See *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143, 144, 573 N.E.2d 1063. The Court, “in construing a complaint upon a motion to dismiss for failure to state a claim, must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party.” *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St 3d 190, 192, 532 N.E.2d 753.

Defendants attached additional materials to their reply briefs and supplements in support of their motions to dismiss, namely ProgressOhio’s discovery responses and an email exchange between counsel for ProgressOhio and counsel for Defendants. Because these materials go beyond the pleadings, they generally may not be considered in analyzing a motion to dismiss. Because a court is not confined to the pleadings in analyzing a motion under Civ.R. 12(B)(1), however, “it may consider material pertinent to such inquiry without converting the motion into one for summary judgment.” *DiFranco*, 2011-Ohio-5434, at ¶20 (citations omitted). Under Civ.R. 12(B)(6), though, a court must give the parties notice before converting a motion to dismiss into a motion for summary judgment when extraneous materials are submitted with the motion to dismiss. Here, the Court declines to convert Defendants’ motions to dismiss into motions for summary judgment. Because the Court can reach a determination on the motions to dismiss without the extraneous materials, the Court disregards them and will consider only the original pleadings. See *Keller v. City of Columbus*, 100 Ohio St.3d 192, 2003-Ohio-5599, ¶19.

III. LAW AND ANALYSIS

Although Plaintiffs allege that the JobsOhio act is unconstitutional in numerous ways, the Court cannot consider the merits of Plaintiffs’ constitutional challenges without making a preliminary determination that Plaintiffs have standing to bring their action, Plaintiffs’ claims are

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ripe, and the Court otherwise has jurisdiction over the matter. Here, Defendants argue that the Court lacks jurisdiction in this matter and should dismiss the action because Plaintiffs lack standing to bring their action and Plaintiffs' claims are not ripe. Any number of common law standards or statutes may provide the basis for standing in an action. The Court will consider each of them in turn before analyzing whether Plaintiffs' claims are ripe for determination.

A. Standing

“It is well established that before an Ohio court can consider the merits of a legal claim, the person seeking relief must establish standing to sue.” *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 469, 715 N.E.2d 1062, citing *Ohio Contractors Assn. v. Bicking* (1994), 71 Ohio St.3d 318, 320, 643 N.E.2d 1088. Under Ohio's common law, standing generally requires that the person bringing the action allege a “personal stake” in the outcome of the action, which generally requires that the plaintiff suffer an actual and concrete injury. *Id.* (citations omitted.); *Bicking*, 71 Ohio St.3d at 320. Thus, the Supreme Court of Ohio has determined that “[i]n order to have standing to attack the constitutionality of a legislative enactment, the private litigant must generally show that he or she has suffered or is threatened with a direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question caused the injury, and that the relief requested will redress the injury.” *Sheward*, 86 Ohio St.3d at 469-470. (citations omitted.)

An organization attempting to litigate on behalf of its members must establish that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Bicking*, 71

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Ohio St.3d at 320, quoting *Simon v. E. Kentucky Welfare Rights Org.* (1976), 426 U.S. 26, 40, 96 S.Ct. 1917. “[T]he association must establish that its members have suffered actual injury.” *Id.*

Plaintiffs here do not allege that they have suffered an “actual injury” such that they would have standing under traditional common law views of standing outlined above. Instead, they allege that their standing arises from legislator standing, statutory standing pursuant to the JobsOhio Act, and “public right” standing.

1. Taxpayer Standing

Under the common law, Courts have addressed the standards that apply when a plaintiff’s standing is based upon his membership in a particular class, such as standing as a taxpayer and citizen or standing as a legislator. A plaintiff does not have standing to challenge a legislative enactment simply because he is a taxpayer or citizen. Rather, the Ohio Supreme Court has set forth the following rule with respect to taxpayer or citizen standing:

[A]part from statute, a taxpayer cannot 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.

State ex rel. Masterson v. Ohio State Racing Comm. (1954), 162 Ohio St. 366, 368, 123 N.E.2d 1 (citations omitted).

Here, Plaintiffs suggests that they are “bringing this action as citizens and taxpayers.” (Plaintiffs’ Memo. Contra at 9.) A close reading of Plaintiffs’ Memorandum Contra, as confirmed at the hearing on the motions to dismiss, and ProgressOhio’s Motion to Strike, however, makes it clear that Plaintiffs are not seeking taxpayer standing but rather that their classification as taxpayers or citizens qualifies them to assert “public right” standing. (See, e.g., Motion to Strike at 2 (“Plaintiffs claim public interest standing as taxpayers.”) As discussed

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below, “public right” standing is distinct from taxpayer standing. Taxpayer standing still requires some form of individual or particularized harm separate from every other taxpayer. *Masterson*, 162 Ohio St. at 368. Plaintiffs are not alleging individual harm here, though, and the Court finds no individual harm that could form the basis for taxpayer standing. (See Motion to Strike at 3 (stating affirmatively that Plaintiffs have never alleged individual harm).) Thus, Plaintiffs do not have taxpayer standing to bring this action.

2. “Public Right” Standing

The Supreme Court of Ohio has recognized an exception to the general standing requirements that the plaintiff must suffer an “actual injury” and have a “personal stake” in the outcome of the litigation. Known as “public right” standing, the exception allows a party that has not suffered an actual injury to have standing “when the issues sought to be litigated are of great importance and interest to the public.” *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 469, 715 N.E.2d 1062. In *Sheward*, the leading case on “public right” standing, the Supreme Court of Ohio defined the doctrine as follows:

We hold, therefore, that 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.

Id. at 475. Nonetheless, the Court significantly limited the application of the doctrine. In addressing the dissent’s concerns that the Court’s holding created a new, greatly expanded basis for standing, the *Sheward* Court clarified its holding, stating “this court will entertain a public action only ‘in the rare and extraordinary case’ where the challenged statute operates, ‘directly and broadly, to divest the courts of judicial power.’” *Id.* at 503-504, quoting with added emphasis its own decision at 467.

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In *Sheward*, the Court found that a trial lawyers association, a labor union, and individual citizens had “public right” standing to challenge the state’s comprehensive tort reform legislation through a prohibition and mandamus action. The Court found the issues were “of such high order of public concern as to justify allowing [the] action as a public action.” *Id.* at 474. Expressing grave concern about the legislature’s defiance of the Court’s authority, the issue of such high concern was separation of powers, keeping judicial power vested in the judiciary instead of allowing the executive branch to usurp such power. *Id.* The usurpation of such power, the Court stated “has been described as the very definition of tyranny.” *Id.* Against this backdrop, the *Sheward* Court made it clear that it would not find “public right” standing to challenge the constitutionality of a legislative enactment unless the legislation was of the same “magnitude and scope” as legislation at issue in *Sheward*. *Id.* at 504.

In *State ex rel. Ohio AFL-CIO v. Ohio Bureau Workers’ Comp.*, 97 Ohio St.3d 504, 2002-Ohio-6717, the Supreme Court revisited “public right” standing. There, a state and national labor union, along with a union president, brought an original mandamus action to challenge the constitutionality of legislation that permitted warrantless drug and alcohol testing of injured workers. In analyzing whether the relators had “public right” standing, the Court reviewed the standard set forth in *Sheward*. *Id.* at ¶11. The Court then found that “[t]he granting of writs of mandamus and prohibition to determine the constitutionality of statute will ‘remain extraordinary’ and ‘limited to exceptional circumstances that demand early resolution.’” *Id.* at ¶12, citing *Sheward*, 86 Ohio St.3d at 515 (Pfeifer, J., concurring). Against this standard, the Court found that the relators had “public right” standing:

As the statutory scheme at issue in *Sheward* affected every tort claim filed in Ohio, H.B. 122 affects every injured worker who seeks to participate in the workers’ compensation system. It affects virtually everyone who works in Ohio. The right at stake, to be free from unreasonable searches, is so fundamental as to

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be contained in our Bill of Rights. H.B. 122 has sweeping applicability and affects a core right. Since H.B. 122 therefore implicates a public right, we find that relators meet the standing requirements of *Sheward*.

Id. at ¶12.

Since *Sheward* and *Ohio AFL-CIO*, courts have had a number of occasions to address whether litigants have public right standing on a variety of compelling issues, but declined to apply the public right exception. See, e.g., *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, ¶47 (mandamus claim challenging the Ohio Housing Finance Agency’s alleged disbursement of unclaimed funds in the form of illegal loans not “rare and extraordinary”); *State ex rel. Kuhar v. Medina Cty. Bd. of Elections*, 108 Ohio St.3d 515, 2006-Ohio-1079, ¶12 (action challenging as unconstitutional legislation that changed the clerk of court position from being appointed to elected not “a ‘rare and extraordinary case’ in which the challenged statute operates ‘directly and broadly, to divest courts of judicial power.’”); *Bowers v. Ohio State Dental Board* (10th Dist. 2001), 142 Ohio App.3d 376, 755 N.E.2d 948 (decided before *Ohio AFL-CIO*) (mandamus action by dentists to compel regulation state dental board to promulgate rules related to state dentistry licensure not of sufficiently great interest and importance to the general public); *Brown v. Columbus City Schools Board of Education*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230 (action challenging the constitutionality of the State’s school funding system “not of the same magnitude as the issue in *Sheward*”); *Brinkman v. Miami University*, 12th Dist. No. CA2006-12-313, 2007-Ohio-4372 (declaratory judgment action challenging the constitutionality of a university’s benefits program related to same-sex partners not “rare and extraordinary”, not of the same “magnitude as the legislation in *Sheward*, and not an original action seeking an extraordinary writ).⁴

⁴ The Court was only able to locate one other case in which a court found public right standing to exist. See *Ohio Roundtable v. Taft*, 119 Ohio Misc.2d 49, 2002-Ohio-3669, 773 N.E.2d 1113. In *Taft*, the plaintiffs challenged the

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In *Brown v. Columbus City Schools Board of Education*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230, the Tenth District Court of Appeals considered whether taxpayers and school district residents had “public right” standing to bring an action for declaratory judgment and injunction challenging the constitutionality of the state’s school funding system. The Court found that the plaintiffs did not have “public right” standing under the standard outlined in *Sheward*. First, the state school funding issue was insufficient to meet that “rare and extraordinary” standard outlined in *Sheward*. *Id.* at ¶14. Second, the *Brown* Court recognized that “public-right standing is found overwhelmingly, if not exclusively, in original actions seeking extraordinary writs.” *Id.*; see also *Brinkman*, 2007-Ohio-4372, at ¶59 (same). The plaintiffs’ action for declaratory judgment and injunctive relief was not an extraordinary writ. *Brown*, 2009-Ohio-3230, at ¶14. Finally, the action did not demand immediate resolution. *Id.*, citing *Brinkman*, 2007-Ohio-4372.

Here, Plaintiffs argue that they have “public right” standing because the JobsOhio Act is unconstitutional and will disassemble the Department of Development and transfer “massive government wealth to a secretive private organization.” (Memo. Contra at 10.) Plaintiffs also argued at the hearing of this matter that there is nothing of greater public interest than “corporate welfare,” which they assert exists in the instant case. Plaintiffs’ action is for a declaratory judgment that the legislation is unconstitutional, and Plaintiffs request an injunction preventing JobsOhio from taking actions authorized by the JobsOhio Act.

Upon review of the current case law on “public right” standing, the Court finds that such standing is limited only to those rare cases that rise to the level of the legislation at issue in *Sheward* and *Ohio AFL-CIO*. This case involves a large amount of money, which is of course of

constitutionality of Ohio’s participation in the multi-state lottery. This Court first found that the plaintiffs had common law standing by showing an actual injury. Nonetheless, the Court also found that the issues presented were “matters of great public importance.” *Ohio Roundtable*, 2002-Ohio-3669, ¶48.

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great concern in Ohio’s tough economic climate. However finding standing based on the amount of money involved would open the floodgates to challenges involving any provision in Ohio’s multibillion dollar budget. There will always be disagreements about how funds are allocated. It is not the judicial branch’s function, though, to evaluate standing based on the wisdom of an expenditure. Although Plaintiffs argue that “public right” standing existed long before *Sheward* and is not limited to the narrow type of case at issue in *Sheward*, (Memo. Contra at 10-12), the Court is bound to follow the standards set forth in *Sheward*, *Ohio AFL-CIO*, and multiple decisions from the Tenth District Court of Appeals.

Further, the Court finds that “public right” standing has been limited solely to actions seeking extraordinary writs, namely mandamus and prohibition actions. Plaintiffs have not sought an extraordinary writ in this matter. The Court has found no case permitting “public right” standing to exist in the absence of a request for an extraordinary writ.⁵ As such, the Court finds that Plaintiffs do not meet the requirements to have “public right” standing.

3. Legislator Standing

As with taxpayer standing, a plaintiff’s status as a member of the legislature does not automatically confer standing to challenge legislation. Instead, the Supreme Court of Ohio has found legislator standing only when the legislator plaintiff has been prevented from casting an effective vote, i.e. the legislator claims his vote was nullified. See *State ex rel. Ohio General Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780, ¶19-21. In *Brunner*, the general assembly passed legislation, which was not signed by the outgoing governor before he left office. When the new governor entered office, the governor had the secretary of state, with whom the

⁵ Although Plaintiffs asserted at the hearing in this matter that they were unable to conceive of a way to bring their action as a mandamus action, counsel for the State Defendants was able to provide examples of potential mandamus actions that could have been asserted, particularly in light of Plaintiffs’ assertions that sufficient action has been taken to withstand Defendants’ ripeness arguments.

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bill had been filed, return the bill to him to be vetoed. Legislators who voted to pass the bill brought a mandamus action to compel the secretary of state to treat the bill as valid law. The *Brunner* Court found that the legislators had standing because they were in the majority who voted to pass the bill and their majority votes would be nullified by the governor's veto and the secretary of state's refusal to treat the bill as law. *Id.* at ¶20.

In reaching its decision, the *Brunner* Court recognized legislator standing to challenge executive decisions after reviewing two U.S. Supreme Court decisions. *Id.* at ¶17-20, citing *Coleman v. Miller* (1939), 307 U.S. 433, 59 S.Ct. 972 (legislator standing existed); and *Raines v. Byrd* (1997), 521 U.S. 811, 117 S.Ct. 2312 (no legislator standing). In *Coleman*, the U.S. Supreme Court found that “legislators whose votes would have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.” *Raines*, 521 U.S. at 823 (interpreting *Coleman*). In *Raines*, however, the Court found that the individual members of Congress did not have standing to challenge the Line Item Veto Act. The legislators only alleged that congressional power as a whole was affected by the enacted legislation. The Supreme Court noted the following about the legislators seeking standing:

They have not alleged that they voted for a specific bill, that there were sufficient votes to pass the bill, and that the bill was nonetheless deemed defeated. In the vote on the Line Item Veto Act, their votes were given full effect. They simply lost that vote.

Id. at 824. In *Raines*, the legislators alleged that “their votes on *future* appropriations bills” would be “less ‘effective’ than before.” *Id.* at 825 (emphasis added). That was not sufficient to provide a basis for legislative standing, though. The *Raines* Court held that the legislators did not have standing because they did not have a “sufficient ‘personal stake’” in the dispute and did not allege a “sufficiently concrete injury.” *Id.* at 830.

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The legislator plaintiffs here allege that they have legislator standing because the JobsOhio Act will prevent them from exercising their legislative rights and duties to appropriate money because the JobsOhio Act diverts money away from the state general revenue fund and obligates it to JobsOhio for 25 years. (Memo. Contra at 8-9.) Although Plaintiffs acknowledge that legislator standing typically applies only to cases of voter nullification, Plaintiffs contend that state courts need not adhere to such strict standards in analyzing legislator standing. (Id. at 8.) The legislators asserted that because there had never been such an extraordinary violation of the Ohio Constitution, there was no precedent to support their standing.

Upon review of *Brunner*, *Coleman*, and *Raines*, the Court finds that legislator standing still requires the legislator to have an “individual injury” beyond alleging that the legislative power as a whole will be or was affected. See *Raines*, 521 U.S. at 830. Further, the Court finds that legislator standing has been limited to instances in which the legislator claims his vote was effectively nullified, i.e. that he voted in the majority but the majority vote was not honored. Although the legislator plaintiffs claim that their personal vote in future appropriations bills may be affected and constrained by the JobsOhio Act, the Court finds such claims similar to those made in *Raines*, which the U.S. Supreme Court unequivocally rejected. The Court found no legal authority allowing a legislator who voted in the minority was found to have legislator standing. Like the legislators in *Raines*, the plaintiff legislators here voted against the JobsOhio Act but simply lost that vote. Although Plaintiffs urge the Court to look past the strict standards imposed by federal courts in this context, the Court could find no basis for expanding legislator standing in this context. The Court finds that Plaintiffs Skindell and Murray do not have standing by virtue of being legislators to challenge the JobsOhio Act.

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4. Statutory Standing

In addition to the common law, a plaintiff may also have standing pursuant to a state statute. Where a statute specifically confers standing on certain individuals or classes of people, common law standing requirements generally do not apply. See *Ohio Valley Associated Builders and Contractors v. Kuempel*, 192 Ohio App.3d 504, 2011-Ohio-756, ¶22; *Ohio Valley Associated Builders and Contractors v. Rapier Electric, Inc.*, 192 Ohio App.3d 29, 2011-Ohio-160, ¶20. Nonetheless, the Supreme Court of Ohio has made it clear that “[n]ot every statute is to be read as an abrogation of the common law.” *Bresnik v. Beulah Park Ltd. Partnership, Inc.* (1993), 67 Ohio St.3d 302, 304, 617 N.E.2d 1096. Instead, “[s]tatutes are to be read and construed in the light of and with reference to the rules and principles of the common law in force at the time of their enactment, and in giving construction to a statute the legislature will not be presumed or held, to have intended a repeal of the settled rules of the common law *unless the language employed by it clearly expresses or imports such intention.*” *Id.* (emphasis in original) (citations omitted). In determining whether a statute confers standing and to whom a statute confers standing, the Court applies general principles of statutory construction. See, e.g., *Kuempel*, 2011-Ohio-756; *Rapier Electric, Inc.*, 2011-Ohio-160. “[T]he words used in the statute are to be taken in their usual, normal, and customary meaning.” *Rapier Electric, Inc.*, 2011-Ohio-160, at ¶24.

Kuempel and *Rapier Electric, Inc.*, provide an example of a statute that confers statutory standing. The statute at issue, R.C. 4115.16, provided: “... the interested party may file a complaint in the court of common pleas of the county in which the violation is alleged to have occurred.” R.C. 4115.16(B). The definitions section of the statute then specifically defined the four types of individuals or organizations that could qualify as an “interested party.” See R.C.

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4115.03(F). The *Kuempel* and *Rapier Electric, Inc.* courts thus did not have to determine whether the statute conferred statutory standing, as that was explicit, but instead only had to determine if the plaintiffs met one of the definitions of an “interested party.”

Plaintiffs here contend that R.C. 187.09 gives them standing to bring this action even if they cannot show that they have been personally injured. R.C. 187.09 provides in pertinent part:

...any claim asserting that any one or more sections of the [JobsOhio Act], 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.

At the hearing on Defendants’ motions, Plaintiffs stated that R.C. 187.09 confers standing upon anyone to challenge the constitutionality of the JobsOhio Act within a certain time period. Defendants, on the other hand, argue that R.C. 187.09 does not change the common law standing rules but instead only provides the place and time within which a person who otherwise has standing may bring an action.

Upon review of the statute, the Court finds that R.C. 187.09 does not abrogate the common law standing rules and confer standing upon Plaintiffs. Nothing in the plain language of the statute addresses standing or *who* may bring an action to challenge the constitutionality of any portion of the JobsOhio Act. The Court finds that, consistent with the above cited cases and statutes, a statute cannot be said to abrogate common law standing rules unless its statutory grant of standing is explicit.

The explicit language of the statute here only specifies the forum in which an action must first be brought and the time within which such an action must be brought. Although Plaintiffs argued that the legislature intended to confer standing for Plaintiffs to bring their action because R.C. 187.09 was enacted after Plaintiffs filed their action in the Supreme Court of Ohio, this

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Court cannot presume an intention that is not reflected in the language employed by the legislature. Had the legislature intended to confer standing on Plaintiffs to challenge the JobsOhio Act it could have done so explicitly. It did not. As such, Plaintiffs do not have standing under R.C. 187.09 to bring their action.

Nonetheless, Plaintiffs argue that the Supreme Court of Ohio has already determined that Plaintiffs have standing under R.C. 187.09. In the Supreme Court's decision finding that it did not have original jurisdiction to hear Plaintiffs' action initially, and striking down the portion of the JobsOhio Act that purported to give the Court jurisdiction over the action, the Court stated that an amendment to the statute, Am.Sub.H.B. 153 "provide[s] a remedy for petitioners to institute an action challenging the constitutionality of amended R.C. 187.01 et seq. by way of an action in the Franklin County Court of Common Pleas." *ProgressOhio.org*, 2011-Ohio-4101, at ¶6. Plaintiffs contend that this language shows that the Supreme Court already analyzed the issue and determined that Plaintiffs have standing. The Court finds, however, that the Supreme Court's decision does not determine the issue of whether Plaintiffs have standing. In its decision, the Supreme Court determined that it did not have original jurisdiction over the action and dismissed it. Although the parties also raised the issue of standing in their briefing to the Supreme Court, the Court did not reach the issue of standing in its decision because its determination that it lacked jurisdiction disposed of the matter. Thus it is not clear what, if any, analysis the Court conducted with respect to the standing issue. Instead, the Court acknowledged that an amendment to the JobsOhio Act provided a more appropriate forum to raise a constitutional challenge to the Act. Although the Court stated that Plaintiffs had another forum in which to bring their action, nothing in the Court's statement reflects that the Court determined

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that Plaintiffs have standing. As such, the Court finds that Plaintiffs do not have statutory standing under R.C. 187.09 to bring their action.

I. CONCLUSION

Despite understandable concerns regarding some of the provisions of the JobsOhio Act, based upon the foregoing analysis, the Court finds that Plaintiffs do not have standing to bring their action. As such, the Court **GRANTS** Defendants' motions to dismiss. Because the Court has determined that Plaintiffs do not have standing to pursue their action, the Court does not need to address whether Plaintiffs' claims are ripe. **It is hereby ORDERED, ADJUGED, and DECREED that Plaintiffs' claims against Defendants are DISMISSED.**

THIS IS A FINAL APPEALABLE ORDER. THERE IS NO JUST CAUSE FOR DELAY.

Copies to:

Victoria Ullman, Esq.
(Electronically and Email)
Counsel for ProgressOhio

Dennis E. Murray, Esq.
(Electronically and Email)
Plaintiff

Michael J. Skindell, Esq.
(Email and Regular U.S. Mail)
55 Public Square, Ste. 1055
Cleveland, Ohio 44113
Plaintiff

Aneca E. Lasley, Esq.
Douglas R. Cole, Esq.
(Electronically and Email)
Counsel for JobsOhio

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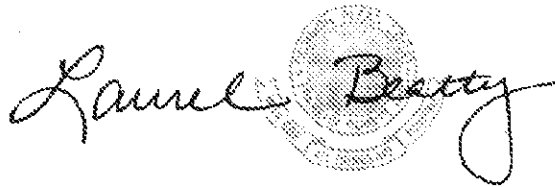
Pearl Chin, Esq.
Aaron Epstein, Esq.
(Electronically and Email)
Counsel for State Defendants

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Franklin County Court of Common Pleas

Date: 12-02-2011
Case Title: PROGRESSOHIO ORG INC -VS- JOBSOHIO
Case Number: 11CV010807
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "Laurel Beatty", is written over a circular, embossed seal. The seal appears to be the official seal of the Franklin County Court of Common Pleas, though the details are somewhat faded.

/s/ Judge Laurel A. Beatty