

IN THE SUPREME COURT OF OHIO

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STATE EX REL ROBERT L. WALGATE, JR., et al. )  
 ) Case No. 2013-0656  
 )  
 )  
 Plaintiffs-Appellants )  
 )  
 v. ) On Appeal from the Franklin  
 ) County Court of Appeals,  
 ) Tenth Appellate District, Case  
 JOHN R. KASICH, et al. ) No. 12-AP-548  
 )  
 )  
 Defendants-Appellees )

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**BRIEF OF AMICI CURIAE THE DAYTON CHAMBER OF COMMERCE, THE  
YOUNGSTOWN/WARREN REGIONAL CHAMBER, THE SEAFARERS  
ENTERTAINMENT AND ALLIED TRADES UNION, THE AFFILIATED  
CONSTRUCTION TRADES OHIO FOUNDATION, THE FRATERNAL ORDER OF  
POLICE OF OHIO, INC., AND THE LEBANON CITY SCHOOL DISTRICT IN  
SUPPORT OF DEFENDANTS-APPELLEES**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTERESTS OF AMICI CURIAE..... 1

INTRODUCTION AND SUMMARY OF PERTINENT LEGISLATION.....4

LAW AND ARGUMENT .....6

I. THE DRASTIC ECONOMIC CONSEQUENCES FOR THIS STATE FAR  
OUTWEIGH PERMITTING THIS POLITICALLY MOTIVATED ACTION TO  
PROCEED .....6

II. IF THIS ACTION WERE TO CONTINUE IT WOULD JEOPARDIZE OHIO’S  
ECONOMY .....11

CONCLUSION.....12

**TABLE OF AUTHORITIES**

**Cases**

*Arizona Christian Sch. Tuition Org.*, 131 S.Ct. 1436, 1449 (2010) ..... 6  
*U.S. v. Richardson*, 418 U.S. 166, 179 (1974)..... 6  
*Valley Forge Christian College v. Am. United for Separation of Church & State*, 454 U.S. 464,  
473 (1982)..... 6

**Statutes**

R.C. 3770.03(A)..... 5  
R.C. 3770.21 ..... 5

**Other Authorities**

Andy Ouriel, *Local school districts benefit from casinos*,  
<http://www.sanduskyregister.com/article/news/5190496> (accessed Jan. 23, 2015) ..... 11  
Editorial, *Penn Natl. Breaks Ground for Racino*, <http://businessjournaldaily.com/economic-development/penn-national-breaks-ground-austintown-racino-2013-5-30> (accessed Jan. 26, 2015) ..... 8  
Editorial, *Take a First Look Inside Dayton’s New \$250M Racino*, *Dayton Business Journal* (Apr. 4, 2010) ..... 8  
Joanne Huist Smith, *Developer Reveals Plans for Racino*, *Dayton Daily News* at A1 (Nov. 16, 2012) ..... 9  
Ohio Casino Control Commission, *Casino Tax Distributions*,  
<http://casinocontrol.ohio.gov/Compliance/DeptofTaxationDistributions.aspx> (accessed Jan. 16, 2015) ..... 7, 10  
Ohio Casino Control Commission, *Ohio Casinos* (listing location of Ohio casinos),  
<http://casinocontrol.ohio.gov/About/OhioCasinos.aspx> (accessed Jan. 23, 2015) ..... 7  
Ohio Dept. of Taxation, *School District Distributions*, Available at  
<http://www.tax.ohio.gov/government/casino.aspx> (accessed Jan. 23, 2015) ..... 10  
Ohio Lottery Commission, *VLT Sales Agent Licensing Status* (listing location of VLT facilities),  
<https://www.ohiolottery.com/Retailers/VLT-Central/VLT-Racetracks> (accessed Jan. 21, 2015)  
..... 7  
Ohio Sec’y of State, *A History of Statewide Issue Votes In Ohio*,  
<http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Statewide%20Issue%20History.aspx> (accessed Jan. 25, 2015) ..... 5  
Pat Galbincea, *Thistledown plans \$88M update, 1,150 video lottery terminals*, *Cleveland Plain Dealer* at B1 (Aug. 23, 2012)..... 9  
Peter H. Milliken, *Ohio casino revenues down for last quarter of 2014*,  
<http://www.vindy.com/news/2015/jan/18/ohio-casino-taxes-payouts-to-cities-coun/> (accessed Jan. 26, 2015)..... 8, 10

Robert Connelly, <i>Study says Ohio casinos, racinos supported close to 14K jobs, economic impact of \$2.2B in 2013</i> , Youngstown Vindicator (Dec. 21, 2014) .....	7
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**Regulations**

O.A.C. § 3770:2-3-08 .....	10
O.A.C. § 3770:2-3-08(A).....	7

**Constitutional Provisions**

Ohio Constitution, Art. XV, Sec. 6(C)(3)(a)-(g) .....	10
Ohio Constitution, Art. XV, Section (6)(C)(3)(a)-(g).....	10
Ohio Constitution, Article XV, Section 6(C).....	5

**INTERESTS OF *AMICI CURIAE***

*Amici curiae* the Dayton Chamber of Commerce (“Dayton Chamber”), the Youngstown/Warren Regional Chamber (“Youngstown/Warren Regional Chamber”), the Seafarers Entertainment and Allied Trades Union (“SEATU”), the Affiliated Construction Trades Ohio Foundation (“ACT Ohio”), the Fraternal Order of Police of Ohio, Inc. (“Ohio FOP”), and the Lebanon City School District, as representatives of businesses, workers, law enforcement, and schools in Ohio, hereby file this brief in support of Appellees.<sup>1</sup> The Dayton Chamber, the Youngstown/Warren Regional Chamber, SEATU, ACT Ohio, the Ohio FOP, and the Lebanon City School District have a significant interest in the still-developing, legalized-gaming industry in Ohio. Indeed, the gaming industry plays a key role in Ohio’s continued recovery from the 2008 economic downturn by providing sustainable growth for this State, creating jobs for the citizens of Ohio, and increasing revenues for Ohio’s businesses. If this Court permits parties, such as Appellants,<sup>2</sup> to continue to pursue this politically-motivated litigation (despite not having standing to do so), it will not only discourage the economic activities that the development of casinos and video lottery terminals (“VLTs”) have brought to Ohio but will also dampen the prospect of bringing other new industries to this State.

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<sup>1</sup> “Appellees” or “Defendants” mean the Ohio Governor John R. Kasich, Ohio Casino Control Commission, Ohio Lottery Commission, Ohio Tax Commissioner Joseph W. Testa, Central Ohio Gaming Ventures, LLC, Toledo Gaming Ventures, LLC, Rock Ohio Caesars LLC, Rock Ohio Caesars Cleveland LLC, and Rock Ohio Caesars Cincinnati LLC, Thistledown Racetrack, LLC, Northfield Park Associates, LLC, Lebanon Trotting Club, Inc., MTR Gaming Group, Inc. and PNK (Ohio), LLC.

<sup>2</sup> “Appellants” or “Plaintiffs” refer to Plaintiffs-Appellants Robert L. Walgate, Jr., David P. Zanotti, the American Policy Roundtable d/b/a Ohio Roundtable, Sandra L. Walgate, Agnew Sign & Lighting, Inc., Linda Agnew, Paula Bolyard, Jeffrey Malek, Michelle Watkin-Malek, Thomas W. Adams, Donna J. Adams, Joe Abraham, and Frederick Kinsey.

The Dayton Chamber, the Youngstown/Warren Chamber, SEATU, ACT Ohio, the Ohio FOP, and the Lebanon City School District have a direct interest in the gambling statutes and regulations that have furthered the development of VLTs and casinos in Ohio. If this Court were to permit this litigation to continue, despite the fact that the Appellants lack standing, it would chill the industry as a whole and stymie the growth and development of casinos and VLTs and this State's recovery from the economic downturn. This would significantly inhibit the continued creation of new jobs in Ohio to serve this nascent industry, and would impede the other businesses that have experienced growth and development due to the creation and operation of the VLTs and casinos. The Dayton Chamber, the Youngstown/Warren Chamber, SEATU, ACT Ohio, the Ohio FOP, and the Lebanon City School District have a vital interest in ensuring that the development of VLTs and casinos continues across Ohio and that the myriad economic benefits flowing from them are not held hostage by the uncertainty created by the pursuit of this litigation. If this Court were to reverse and permit these types of Plaintiffs to maintain these types of politically motivated actions, it would have an overall chilling effect on the continued economic development of our State.

The Dayton Chamber is a trade association of almost 3,000 members comprised of businesses, professionals, and individuals working together to build a healthy business environment, promote economic development, and work effectively to improve the quality of life in the Greater Dayton region.<sup>3</sup> The Dayton Chamber serves as the lead business advocate in that region. The Dayton Chamber's mission is to provide resources and an environment that promotes the success of the organization's member businesses, and to assist in formalizing the

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<sup>3</sup> The Greater Dayton region includes the counties of Butler, Darke, Clark, Greene, Miami, Montgomery, Preble, Shelby, and Warren.

vision of a highly innovative and business-friendly region that attracts and retains business and intellectual capital.<sup>4</sup>

The Youngstown/Warren Chamber is a private, non-profit organization that provides leadership and business services to promote the growth of nearly 2,600 members — representing more than 100,000 employees in the Mahoning Valley. The Youngstown/Warren Chamber’s mission is to provide economic development and business services that promote the growth of its members as well as the Mahoning Valley, while emphasizing the importance of education to prepare the future workforce for an increasingly competitive and global economy.

SEATU represents workers in the service, hospitality and gaming industries throughout the United States, including members who are working in the casinos and VLT facilities at issue in this matter. Chartered in 1995, SEATU prides itself on providing the best possible representation for its members, and is affiliated with the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Water.

ACT Ohio was created by the Ohio State Building & Construction Trades Council to facilitate economic and industrial development and promote industry best practices for Ohio’s public and private construction. ACT Ohio works on behalf of fourteen regional councils, one hundred twenty-three local affiliates, and close to 91,000 of the most highly-skilled, highly-trained construction workers in this State. With limited exceptions, ACT Ohio affiliates constructed, and will provide long-term service and maintenance to the casinos and VLT facilities at issue in this matter. The success or failure of the casinos and VLT facilities will

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<sup>4</sup> The Dayton Chamber represents businesses in all nine counties that comprise the Greater Dayton region.

impact additional economic growth opportunities in their respective regions, which has a direct correlation on ACT Ohio's affiliates' volume of work.

The Ohio FOP is Ohio's largest law enforcement organization, and represents the interests of 25,000 active and retired law enforcement officers in the State of Ohio. The Ohio FOP has a vital economic interest in these proceedings since law enforcement is allocated to receive two percent of the tax revenues from the operation of the casinos.

The Lebanon City School District is located 30 miles north of Cincinnati and 30 miles south of Dayton in the heart of fast-growing Warren County, and has approximately 4,700 students. The Lebanon City School District has an economic interest in these proceedings since the school district receives tax revenues from the operation of the casinos.

As representatives of businesses, workers, law enforcement, and schools, the Dayton Chamber, the Youngstown/Warren Chamber, SEATU, ACT Ohio, the Ohio FOP, and the Lebanon City School District respectfully ask that this Court affirm the court of appeals' decision.

#### **INTRODUCTION AND SUMMARY OF PERTINENT LEGISLATION**

In this case, Plaintiffs are anti-gambling activists who seek to challenge the legality of the constitutional amendment and statutes that form the regulatory framework for casino gambling and VLTs in Ohio. If this Court were to permit Plaintiffs to continue with their litigation in spite of their lack of standing, it would have a detrimental impact on businesses, employees, and governmental agencies that rely upon the economic benefits resulting from the creation and continued operation of these facilities. Permitting Plaintiffs to maintain this action would seriously inhibit the gaming industry's growth and development, and would cause troubling uncertainty for the businesses, individuals, and organizations that have already invested

significantly in this industry in Ohio in reliance upon the constitutional amendment and statutes that legalized gaming in Ohio. Indeed, if Plaintiffs are permitted to maintain politically motivated litigation without having requisite standing, this would have dire consequences for the future of this State's economy. By permitting any disgruntled activist to attack an entire legalized basis for economic development, Ohio's economic growth would be negatively impacted into the foreseeable future.

The citizens of Ohio and the members of the General Assembly have repeatedly pressed for legalized gaming in Ohio. Most recently, in 2009, Ohio voters passed Issue 3, which permitted the establishment of four constitutional casinos in Cincinnati, Cleveland, Columbus, and Toledo. *See* Ohio Constitution, Article XV, Section 6(C). *See also* Ohio Sec'y of State, *A History of Statewide Issue Votes In Ohio*, <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Statewide%20Issue%20History.aspx> (accessed Jan. 25, 2015). In 2010, voters approved an amendment to Article XV, Section 6(C) of the Ohio Constitution to permit the relocation of the Columbus casino. *See id.*

After the constitutional authorization of gaming, the General Assembly passed a series of bills establishing a regulatory regime for the operation of casinos and VLTs. On July 13, 2009, the legislature passed Am. Sub. H.B. No. 1 ("H.B. 1"), which was signed by the Governor. Among other things, H.B. 1 authorized the Ohio Lottery Commission to conduct VLTs. *See* R.C. 3770.03(A) (permitting Lottery Commission to implement rules for VLTs); R.C. 3770.21 (authorizing VLTs). In July 2009, the legislature passed Am. Sub. H.B. 519 ("H.B. 519"), which was later amended by Am. Sub. H.B. No. 277 ("H.B. 277"). Governor Kasich signed this legislation on July 15, 2011. H.B. 519 and H.B. 277 set forth numerous specific statutory

requirements relating to casino gaming in Ohio. Plaintiffs now challenge this regulatory framework. As the court of appeals concluded, however, Plaintiffs lack standing to do so.

## **LAW AND ARGUMENT**

### **I. THE DRASTIC ECONOMIC CONSEQUENCES FOR THIS STATE FAR OUTWEIGH PERMITTING THIS POLITICALLY MOTIVATED ACTION TO PROCEED**

The United States Supreme Court has repeatedly emphasized that policy-based litigation, absent the satisfaction of the elements of traditional standing, has a deeply negative impact on adverse parties. *See Valley Forge Christian College v. Am. United for Separation of Church & State*, 454 U.S. 464, 473 (1982) (dismissing the matter on lack of standing when advocates sought to challenge donation of federal property to religious organization). As such, the Supreme Court has rigorously enforced the standing requirements of injury in fact, causation, and redressability. *Arizona Christian Sch. Tuition Org.*, 131 S.Ct. 1436, 1449 (2010) (litigants lacked standing to challenge tuition school vouchers for parochial schools); *see also U.S. v. Richardson*, 418 U.S. 166, 179 (1974) (holding that litigants lacked standing to challenge nondisclosure of CIA budget; as courts become more influential, standing requirements must be adhered to).

In addition to the negative impact that this litigation has on Appellees, permitting this matter to continue despite Plaintiffs' lack of standing would also have a decidedly negative impact on the businesses and citizens of Ohio. The continued pursuit of this litigation would forestall the growth of this vital industry to the severe detriment of Ohio businesses, State agencies, and citizens. The important interests at stake, including the vitality of Ohio's economy for its businesses and citizens, underscore the critical need for this Court to finally put a decisive end to this litigation.

In the last few years, Ohio's economy has benefited from billions of dollars of investment into this State by the gaming industry. Since 2009, four full-service casinos have opened in Cincinnati, Cleveland, Columbus, and Toledo, and seven VLT facilities have been opened in Columbus, Cleveland, Northfield, Lebanon, Cincinnati, Dayton, and Youngstown. See Ohio Casino Control Commission, Ohio Casinos (listing location of Ohio casinos), <http://casinocontrol.ohio.gov/About/OhioCasinos.aspx> (accessed Jan. 23, 2015); Ohio Lottery Commission, VLT Sales Agent Licensing Status (listing location of VLT facilities), <https://www.ohiolottery.com/Retailers/VLT-Central/VLT-Racetracks> (accessed Jan. 21, 2015). Billions of dollars have been brought into Ohio and spent on the acquisition, creation, and improvements relating to the construction and operation of these facilities. See Robert Connelly, *Study says Ohio casinos, racinos supported close to 14K jobs, economic impact of \$2.2B in 2013*, *Youngstown Vindicator* (Dec. 21, 2014).<sup>5</sup>

Under the Ohio Constitution, taxes on casino revenues are allocated among numerous governmental agencies, including counties, school districts, cities, gaming regulators, law enforcement, and others. Based on these allocations, those governmental entities have received over \$651,604,910.30 in funds since 2009. See Ohio Casino Control Commission, Casino Tax Distributions, <http://casinocontrol.ohio.gov/Compliance/DeptofTaxationDistributions.aspx> (accessed Jan. 16, 2015). Similarly, payments to the Ohio Lottery as a result of VLT revenues have totaled \$205,749,224 since 2012. See Ohio Lottery Commission, VLT Results for Fiscal Year 2012, 2013, 2014; see also O.A.C. § 3770:2-3-08(A) (providing that 33.5% of the revenues from the VLTs will be paid to the Ohio Lottery Commission).

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<sup>5</sup> Available at: <http://www.vindy.com/news/2014/dec/21/gaming-had-b-impact-in-ohio-in-/> (accessed Jan. 22, 2015).

As one example of the many benefits of the gaming industry in the City of Dayton, the relocated VLT facility in Dayton has created 500 permanent jobs, 1,000 temporary jobs, and an estimated 500 additional jobs created by secondary businesses supporting the facility. There has been a \$250 million capital investment into the relocated facility, which has had a significant, positive economic impact on the Greater Dayton region, in addition to the \$75 million relocation fee paid to Ohio. See Editorial, *Take a First Look Inside Dayton's New \$250M Racino*, Dayton Business Journal (Apr. 4, 2010).<sup>6</sup>

These economic advantages due to the building and operation of the casinos and VLT facilities are not limited to Dayton. As the recipients of 51% of the taxes on casinos, Ohio's 88 counties have shared in just over \$25 million last year, with approximately \$7.6 million being remitted to Ohio's eight major cities. Youngstown and Mahoning County have each received over a million dollars last year from the taxes assessed against casinos. Peter H. Milliken, *Ohio casino revenues down for last quarter of 2014*, <http://www.vindy.com/news/2015/jan/18/ohio-casino-taxes-payouts-to-cities-coun/> (accessed Jan. 26, 2015). The VLT facility that has been constructed and is operating in Austintown represents a \$125 million investment into the Mahoning Valley economy. Editorial, *Penn Natl. Breaks Ground for Racino*, <http://businessjournaldaily.com/economic-development/penn-national-breaks-ground-austintown-racino-2013-5-30> (accessed Jan. 26, 2015). This VLT facility has created 1,000 direct and indirect jobs and about 1,000 temporary construction jobs. This VLT facility has obtained approved racing dates from the Ohio State Racing Commission for year 2015. The

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<sup>6</sup> Available at : <http://www.bizjournals.com/dayton/news/2014/08/25/take-a-first-look-inside-dayton-s-new-250m-racino.html> (accessed Jan. 21, 2015).

VLT facility continues to attract a steady flow of customers and play a significant part in supporting the Mahoning Valley economy.

Ohio workers have also greatly benefitted from legalized gaming. Thousands of construction workers obtained temporary employment for the construction of the casinos and VLT facilities. Tradesmen, technicians and businesses have obtained increased revenue through the utilization of their goods and services to create the infrastructure for the casinos and VLT facilities to operate in Ohio. Since each casino has several hundreds of workers, over 15,000 jobs have been created in this State due to the creation and operation of casinos and VLT facilities. These citizens, in turn, put their working dollars back into our economy by purchasing goods and services in their everyday lives.

The casinos and VLT facilities also support job creation by secondary businesses that have seen increased growth by supporting the operation of the casinos and VLT facilities. *See* Joanne Huist Smith, *Developer Reveals Plans for Racino*, Dayton Daily News at A1 (Nov. 16, 2012) (noting the Dayton VLT facility will create 1,000 temporary construction jobs and will generate \$125 million in construction costs, \$75 million in relocation fees, and \$50 million in VLT operator fees); Pat Galbincea, *Thistledown plans \$88M update, 1,150 video lottery terminals*, Cleveland Plain Dealer at B1 (Aug. 23, 2012). The creation of jobs in this State is further evidenced by the fact that the Ohio Casino Control Commission has granted 6,390 licenses to casino gaming employees, 86 licenses to key employees, 70 licenses to operator key employees, 32 licenses to vendors, and 271 licenses to vendor key employees.<sup>7</sup> State and local

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<sup>7</sup> Licenses are granted to casino operators, management companies, gaming-related vendors, key employees, and casino gaming employees. The Casino Control Law requires that every person conducting or participating in casino gaming be licensed.

governments also receive additional tax revenues from payroll and employment taxes due to the increased employment. With more employees working, unemployment costs are reduced for this State.

Additionally, law enforcement receives 2% of the tax revenue from the casinos. See Ohio Constitution, Art. XV, Section (6)(C)(3)(a)-(g). Since 2009, this has resulted in law enforcement in our State receiving over thirteen (13) million dollars. See Ohio Casino Control Commission, Casino Tax Distributions, <http://casinocontrol.ohio.gov/Compliance/DeptofTaxationDistributions.aspx> (accessed Jan. 16, 2015).

As a recipient of 34% of the revenues received for the taxes assessed against casinos, school districts have received a twice-yearly distribution totaling over ninety (90) million dollars in 2014. Peter H. Milliken, *Ohio casino revenues down for last quarter of 2014*, <http://www.vindy.com/news/2015/jan/18/ohio-casino-taxes-payouts-to-cities-coun/> (accessed Jan. 26, 2015) Further, since the year 2009, schools districts have received over \$221,545,669.51 in funds as a result of the developing gaming industry. See Ohio Casino Control Commission, Casino Tax Distributions, <http://casinocontrol.ohio.gov/Compliance/DeptofTaxationDistributions.aspx> (accessed Jan. 16, 2015). These are funds that the school districts would not otherwise have received, and represent a separate stream of funds for the school districts. O.A.C. § 3770:2-3-08; Ohio Constitution, Art. XV, Sec. 6(C)(3)(a)-(g). The school districts across the State share in these funds, which becomes particularly significant for the smaller school districts in Ohio. See Ohio Dept. of Taxation, School District Distributions, Available at <http://www.tax.ohio.gov/government/casino.aspx> (accessed Jan. 23, 2015); Andy Ouriel, *Local*

*school districts benefit from casinos*, <http://www.sanduskyregister.com/article/news/5190496> (accessed Jan. 23, 2015).

Further, due to the increased value in the improvements and real estate from the construction of the casinos and VLT facilities in Ohio, the counties where these casinos and facilities are located have seen an increase in the property taxes that can be collected. As such, the school districts where these casinos and VLT facilities are located receive a larger amount of tax dollars from these increased property values.

State and local governmental agencies have greatly benefited from tax revenues and licensure fees, as well as the overall increase in economic activities through the construction and operation of the casinos and VLT facilities. Relying upon the expansion of gaming in Ohio, businesses, citizens, and state and local governments have created long-term plans that depend on the revenues generated from the continued operation of these facilities as contemplated by the constitutional amendment and statutes permitting legalized gaming.

## **II. IF THIS ACTION WERE TO CONTINUE IT WOULD JEOPARDIZE OHIO'S ECONOMY**

The vitality of Ohio's economy would be jeopardized if this litigation is permitted to proceed. Allowing Appellants to continue with this litigation would have a broadly felt chilling effect on future economic development in Ohio. With regard to the gaming industry, operators of the casinos and VLTs may choose to stop making significant investments in Ohio due to the uncertainty that will ensue if the gaming laws remain in legal limbo. Future temporary and permanent jobs that would be created as this industry continues to develop in Ohio may disappear. This State may not see the full economic benefit anticipated by its citizens and businesses from the operation of these casinos and VLTs if the laws that permitted their creation

remain in a state of uncertainty and unrest. The governmental agencies that have already earmarked and allocated funds from casino and VLT tax revenues to support their respective missions may hesitate to proceed so long as this litigation remains pending and the future of legalized gaming in Ohio remains uncertain. These agencies may avoid long-term plans that contemplate the use of these revenues given the uncertainty created by this continued litigation.

Within the last ten years, Ohio's economy has started to go through a beneficial and lasting transformation from industries that dominated in the 20th century, to new industries that will move and accelerate Ohio's economic growth into the 21st century.<sup>8</sup> As Ohio continues to move from the industrial age into the future, these new industries will continue to consider whether to invest in Ohio. The continuance of Plaintiffs' litigation could jeopardize the creation, development, and progress of new industries in Ohio. Although political activists are welcome to exercise their constitutional right to oppose the creation of every one of these new industries in Ohio, once an industry is legally established through the democratic process, these activists should not be able to maintain an action in this State's courts without satisfying the traditional elements of standing.

## CONCLUSION

For the foregoing reasons, and for those stated in the merit brief of Appellees, *amici curiae* the Dayton Chamber of Commerce, the Youngstown/Warren Regional Chamber, the Seafarers Entertainment and Allied Trades Union, the Affiliated Construction Trades Ohio Foundation, the Fraternal Order of Police of Ohio, Inc., and the Lebanon City School District respectfully ask that the judgment of the court of appeals be affirmed.

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<sup>8</sup> Such new industries may include, but are not limited to, oil and gas, healthcare, wind energy, biotechnology and gene therapy, and new agricultural methods.

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## CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of the foregoing was served by First-Class

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