

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

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| JOHN REID, <i>et al.</i>, |) | |
| |) | |
| Plaintiffs, |) | CASE NO. 25 CV 10760 |
| |) | |
| v. |) | JUDGE LYNCH |
| |) | |
| SHERYL MAXFIELD, <i>et al.</i>, |) | MAGISTRATE HUNT |
| |) | |
| Defendants. |) | |

MAGISTRATE DECISION GRANTING PRELIMINARY INJUNCTION

This matter was initiated via a Verified Complaint filed on December 17, 2025. On December 18, 2025, Plaintiffs filed an Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction. The Court held a hearing on Plaintiffs' Emergency Motion on December 23, 2025, after which it issued a temporary restraining order ("TRO") that enjoined Defendants from certifying, transferring, diverting, reclassifying, liquidating, or otherwise expending funds held in the Ohio Unclaimed Funds Trust account until January 8, 2026, at 5:00 p.m. On January 6, 2026, this Court modified the TRO to clarify that the TRO shall not "be construed to prohibit the division from continuing to administer the Ohio Unclaimed Funds Trust Fund in a custodial capacity, including the routine processing and payment of approved claims and ordinary administrative expenses."

The hearing on Plaintiffs' request for a preliminary injunction was held on January 8, 2026, in Courtroom 7D and was recorded by electronic means. Plaintiffs were represented by attorneys Jeffrey Crossman, Marc Dann, and Marita Ramirez. Defendants were represented by attorneys Aneca Lasely, Joshua Klarfeld, and Andrea

Howell. Testimony was given by both Plaintiffs¹, Senator Paula Hicks-Hudson, and Akil Hardy. The parties stipulated to the admissibility of the testimony of Amy Schellhammer and Patrick Marr contained in the transcript which was filed in the record on December 19, 2025. Plaintiffs offered Exhibits 1 – 6, and 8 which were admitted into evidence. Defendants offered the following exhibits which were admitted into evidence: A, B, F, H, J, L, N, O, Q, Z, AH, AI, AO, and AP. The parties also stipulated to facts included in Defendants' Notice of Filing of Stipulations of Fact filed on December 21, 2025. At the conclusion of the hearing, counsel was ordered to file Proposed Findings of Fact and Conclusions of Law; these were filed on January 29, 2026.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned has reviewed the relevant briefs, weighed the evidence submitted during the hearing, and applied the required law. The undersigned's Findings of Fact are based on the testimony of the witnesses and the exhibits introduced into evidence. The undersigned has reviewed all the exhibits and considered each as to its weight and credibility. The credibility of the witnesses was considered. The credibility of a witness is based upon the appearance of the witness upon the stand; his/her manner of testifying; the reasonableness of the testimony; the opportunity he/she had to see, hear and know the things concerning which he/she testified; his/her accuracy of memory; frankness (or lack of it); intelligence, interest and bias (if any); together with common sense and all the facts and circumstances surrounding the testimony. Of importance in deciding the Findings of Facts, the undersigned notes that she is free to believe all, some,

¹ Plaintiff Steven Ling appeared and testified via Zoom.

or none of the testimony of each witness appearing before her. *State v. Ellis*, 2013-Ohio-1184 (8th Dist.).

It is the duty of the magistrate to consider the credibility or believability of the witnesses who testify and to determine the weight to be given to the evidence that is presented by the parties. It has been noted that persons such as judges, magistrates, jury members and other finders of fact are best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. *Seasons Coal Co. v. Cleveland*, 10 Ohio St. 3d 77 (1984).

Regarding findings of fact, the undersigned finds that the facts set forth below, and only those facts, have been proved by clear and convincing evidence, which is the standard of proof when a party seeks a preliminary injunction. If the undersigned has not made a factual finding that party believes the undersigned should have made, it is because the undersigned has determined that there is not clear and convincing evidence to support such a factual finding, that the evidence was not credible, or because the factual finding is not relevant.

I. BACKGROUND

The Unclaimed Funds Law – R.C. 169.01 *et seq.* – provides that certain unclaimed funds are to be deposited into Ohio’s Unclaimed Funds Trust Fund (the “UFTF”). The Department of Commerce, Division of Unclaimed Funds (the “Division”) is charged with enforcing the statute and maintaining the UFTF. *R.C. 169.05*. Prior to the enactment of House Bill 96 (“H.B. 96”), Ohio’s unclaimed funds program operated as a custodial system under which the State held unclaimed property in trust for the benefit of the rightful

owners. Property held in the UFTF historically remained private property, subject to recovery by the owner or the owner's heirs upon proof of ownership.

On June 30, 2025, Governor DeWine signed H.B. 96, Ohio's biennial budget bill. H.B. 96, which amended the Unclaimed Funds Law, required that funds held in the UFTF for ten years or more are deemed abandoned by operation of law and escheat to the State. Under the amended statute:

- Funds deposited before January 1, 2016, will escheat on January 1, 2026. *R.C. 169.08(l)(1) (as amended by H.B. 96).*
- Funds deposited after January 1, 2016, will escheat after ten years unless, they are claimed at any time during that ten-year period. *R.C. 169.09(l)(2) (as amended by H.B. 96).*
- Claimants can recover escheated funds until January 1, 2036, by filing a valid claim. *R.C. 169.08(l)(3)(b) (as amended by H.B. 96).*

As a result, certain funds that were held in the UFTF for owners will be appropriated by the State and transferred into a separate state-owned fund. Presently, there is over \$4 billion in the UFTF. [Stipulations, ¶19]. The portion of the funds in the UFTF that was scheduled to escheat to the State on January 1, 2026, is estimated to be valued at approximately \$1.7 to \$1.9 billion. [Stipulations, ¶20].

Section 229.40 of H.B. 96 orders the Director of Commerce to remit \$1 billion of the unclaimed funds that were to escheat to the State on January 1, 2026, to the State treasury for deposit into the Ohio Cultural and Sports Facility Performance Grant Fund ("Grant Fund"). The money in the Grant Fund "shall be used as performance grants for Ohio sports facility, and major sports facility projects in accordance with sections 123.281 and 123.283." *R.C. 123.282.* The remaining portion of the unclaimed funds that escheat to the State on January 1, 2026, "shall be deposited into the Ohio Escheatment Fund, which is hereby created in the State Treasury." *Am.Sub.H.B. No.*

96, § 229.40. Thereafter, any unclaimed funds that statutorily escheat to the State shall also be credited to the Grant Fund on a biannual basis. *R.C. 169.08(4)*, and *Am.Sub.H.B. No. 96, § 229.40*.

\$600 million from the Grant Fund shall be used to support construction of a “transformational major sports facility mixed-use project” pursuant to R.C. 123.281 that is associated with a Brook Park economic development project (the “Brook Park Project”). *Id.* A “transformational major sports facility mixed-use project” must: (1) include a construction of a major sports facility; (2) integrate some combination of retail, office, hotel, residential, recreation, structured parking, or other similar uses into one or more mixed-use developments; (3) be expected to generate incremental state tax revenues pursuant to state taxes levied under Chapters 5739, 5741, and 5751 of the R.C.; and (4) have an initial total estimated construction cost, excluding any site acquisition cost, that is greater than \$1 billion. *R.C. 123.28(Q)(1)*. “Major sports facility” means a stadium, arena, complex, or other facility that a governmental agency owns, will own, or has or will have a sufficient ownership interest in, the primary purpose of which is to provide a site or venue for the presentation of home games of a professional sports franchise for a period of at least thirty years after completion of the construction of the stadium, arena, complex, or other facility.” *R.C. 123.28(P)*. The “major sports facility” at issue here is a stadium which is to be located in Brook Park and used by the Cleveland Browns (“Stadium”). The Browns are owned by Haslam Sports Group.

In short, the Grant Fund was created under R.C. 123.282 which provides that “[t]he money in the fund shall be used as performance grants for Ohio sports facility, and major sports facility projects in accordance with sections 123.281 and 123.283.

The money in the fund shall be used for Ohio cultural facilities subject to appropriations made by the general assembly.” R.C. 123.282. R.C. 123.281(H)(1) requires that the major sports facility (Stadium), upon completion, will be a part of a transformational major sports facility mixed-use project (Brook Park Project).

II. STANDARD OF REVIEW

A preliminary injunction is an extraordinary remedy; therefore, the moving party has a substantial burden to meet in order to be entitled to the injunction. *Sinoff v. Ohio Permanente Med. Group*, 146 Ohio App. 3d 732, 2001 Ohio 4186, 767 N.E.2d 1251, citing *Ormond v. Solon* (Oct. 18, 2001), Cuyahoga App. No. 79223, 2001 Ohio App. LEXIS 4654. The moving party must establish a right to a preliminary injunction by showing clear and convincing evidence of each element of the claim. *Sinoff v. Ohio Permanente Med. Group*, 146 Ohio App. 3d 732 (8th Dist. 2001), citing *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.*, 109 Ohio App.3d 786 (10th Dist. 1996). “Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.” *Connor Grp. V. Raney*, 2nd Dist. Montgomery, 2016-Ohio-2959, ¶ 20, 2016 Ohio App. LEXIS 1836, *17 (May 13, 2016) (internal citations omitted).

In determining whether to grant a preliminary injunction, a court must consider:

- (1) whether there is a substantial likelihood that the plaintiff will prevail on the merits of its claims;
- (2) whether the plaintiff will suffer irreparable harm if the injunction is denied;

(3) whether third parties will be unjustifiably harmed if the injunction is granted;
and

(4) whether the public interest will be served if the injunction is granted.

Hydrofarm, Inc. v. Orendorff, 2008-Ohio-6819, ¶18 (10th Dist.), quoting *Vanguard Transp. Systems, Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786, 790 (10th Dist.1996); *Valco Cincinnati, Inc. v. N&D Machining Serv., Inc.*, 24 Ohio St.3d 41 (1986); *Corbett v. Ohio Building Authority*, 86 Ohio App.3d 44, 49 (10th Dist.1993). See also *Thomas J. Dyer Co. v. Franklin County Convention Facilities Authority*, 61 Ohio Misc.2d 132, 133-34 (Franklin Cty.C.P.1990). The primary goal of preliminary injunctive relief “is to preserve the status quo pending final determination of the matter.” *Ohio Urology, Inc. v. Poll*, 72 Ohio App.3d 446, 454 (10th Dist.1991).

Moreover, the party seeking injunctive relief must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim. *Vanguard, supra* at 790; *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14 (10th Dist.1996). In determining whether to grant injunctive relief, no one factor is dispositive; the four factors must be balanced with the “flexibility which traditionally has characterized the law of equity.” *Id.* “When there is a strong likelihood of success on the merits, preliminary injunctive relief may be justified even though a plaintiff’s case of irreparable injury may be weak. In other words, what [a] plaintiff must show as to the degree of irreparable harm varies inversely with what [a] plaintiff demonstrates as to its likelihood of success on the merits.” *Id.*

“Courts should take ‘particular caution . . . in granting injunctions, especially in cases affecting a public interest where the court is asked to interfere with or suspend the operation of important works or control the action of another department of government.”

Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist., 73 Ohio St.3d 590, 604 (1995), citing *Leaseway Distrib. Centers, Inc. v. Dept. of Adm. Serv.*, 10th Dist. Nos. 88AP-330, 88AP-332, 88AP-370 (June 16, 1988).

III. LIKELIHOOD THAT PLAINTIFFS WILL PREVAIL ON THE MERITS

Plaintiffs' First Amended Verified Complaint filed on January 5, 2026, sets forth the following claims: (1) Violation of Art. I, § 19, Ohio Constitution (Takings Clause); (2) Violation of Art. I, § 16, Ohio Constitution (Due Process); (3) Breach of Fiduciary Duty under R.C. 169.01, *et seq.*; (4) Violation of the Ohio Constitution – Single Subject Rule; (5) Injunctive Relief; (6) Mandamus; and (7) Abuse of Legislative Authority / Ultra Vires Act. Plaintiffs filed the First Amended Complaint individually and as representatives of a class of persons with funds held in trust by the State of Ohio's unclaimed funds trust account. However, at the time of the hearing, Plaintiffs had not yet made a request for class certification. "[U]nnamed putative class members are not parties to an action prior to class certification." *Gemberski v. PartsSource, Inc.*, 2019-Ohio-3231, ¶29.

As to determining Plaintiffs' likelihood of success on the merits, the undersigned will limit her analysis to the first two counts in the complaint. As to the counts of Breach of Fiduciary Duty, the Single Subject Rule, Mandamus, and Ultra Vires Act, Plaintiffs completely failed to address the likelihood of their success on the merits in their Proposed Findings and Conclusions. Accordingly, the undersigned deems these claims waived in determining whether a preliminary injunction should be given in this matter.

A. Plaintiff's Have Standing

"Before an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue." *Ohio Pyro, Inc. v. Ohio Dept. of*

Commerce, Div. of State Fire Marshal, 2007-Ohio-5024, ¶ 27. As stated by the Ohio Supreme Court:

The Ohio Constitution expressly requires standing for cases filed in common pleas courts. Article IV, Section 4(B) provides that the courts of common pleas “shall have such original jurisdiction over all *justiciable matters*.” (Emphasis added.) A matter is justiciable only if the complaining party has standing to sue. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 41. (“It is fundamental that a party commencing litigation must have standing to sue in order to present a justiciable controversy”). Indeed, for a cause to be justiciable, it must present issues that have a “direct and immediate” impact on the plaintiffs. *Burger Brewing Co. v. Liquor Control Comm., Dept. of Liquor Control*, 34 Ohio St.2d 93, 97-98, 296 N.E.2d 261 (1973). Thus if a common pleas court proceeds in an action in which the plaintiff lacks standing, the court violates Article IV of the Ohio Constitution. Article IV requires justiciability, and justiciability requires standing. These constitutional requirements cannot be bent to accommodate *Sheward*.

ProgressOhio.org, Inc. v. JobsOhio, 2014-Ohio-2382, ¶ 7.

Standing does not depend on the merits of the plaintiff’s claim. *Moore v. Middletown*, 2012-Ohio-3897, ¶ 23. Rather, standing depends on whether the plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case. *ProgressOhio.org, Inc.*, *supra*, at ¶ 7.

Common-law standing requires a litigant to demonstrate that they suffered: (1) an injury; (2) that is fairly traceable to the defendant’s allegedly unlawful conduct; and (3) that is likely to be redressed by the requested relief. *Ohioans for Concealed Carry, Inc. v. City of Columbus*, 164 Ohio St.3d 291, ¶ 12 (2020). For common-law standing, a party wishing to sue must have a “direct, personal stake” in the outcome of the case; “ideological opposition to a program or legislative enactment is not enough.” *State ex rel. Walgate v. Kasich*, 147 Ohio St.3d 1, ¶ 18 (2016), quoting *ProgressOhio.org, Inc.*, *supra*, at ¶ 1 (2014). “The essence of the doctrine of standing is whether the party

seeking relief has ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.’” *Racing Guild of Ohio, Local 304 v. Ohio State Racing Comm.*, 28 Ohio St.3d 317, 321 (1986), quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962).

Both Plaintiffs have funds in the UFTF and have filed claims with the Division to obtain their funds. Plaintiff Ling has funds that were deposited on February 22, 2023. Plaintiff Reid has funds that were deposited separately on December 22, 2023, December 9, 2024, and April 5, 2010. [Ex. 6]. Nevertheless, Defendants argue that Plaintiffs lack an actual, imminent injury that a preliminary injunction would prevent. Specifically, Defendants argue that Plaintiffs could file a claim to retrieve their funds prior to January 1, 2026, and if their funds would be escheated to the State on that date, at any point prior to January 1, 2036. The undersigned disagrees and finds that Plaintiffs have an actual, imminent injury of losing vested property interests (loss of title ownership) in their funds in the UFTF, and therefore all control over how their property will be used. This is a sufficient injury that is fairly traceable to the Amended Unclaimed Funds Law that is likely to be redressed by a preliminary injunction.

Furthermore, the undersigned notes that prior to filing their complaint and request for injunctive relief here, Plaintiffs’ counsel filed a nearly identical case in the Southern District of Ohio and sought injunctive relief alleging that the amended statute violated the Takings Clause of the Fifth Amendment to the United States Constitution. *Bleick v. Maxfield*, 2025 U.S. Dist. LEXIS 254560 (S.D. Ohio 2025). In that matter, Defendants

presented the same argument that is before the undersigned. The *Bleick* Court appropriately found that Defendants had standing:

Defendants argue that Plaintiffs lack standing and that their claims are not ripe because Plaintiffs are permitted to file administrative claims to recover their unclaimed funds until January 1, 2036, but have failed to do so, thereby self-inflicting injury * * * The Supreme Court's decision in *Knick v. Township of Scott*, 588 U.S. 180 (2019), precludes this argument. There the Supreme Court held that plaintiffs need not exhaust state remedies to have an "actionable" takings claim in federal Court. *Id.* at 185, 190. Instead "[t]he Fifth Amendment right to full compensation arises at the time of taking, regardless of post-taking remedies that may be available to the property owner." *Id.* at 190.

Federal courts have applied the holding from *Knick* to subsequent lawsuits involving unclaimed funds and allowed plaintiffs to proceed with takings claims even if they had not pursued state law remedies for recovering unclaimed funds first.

Id. at 10.

Accordingly, the undersigned finds that Plaintiffs have standing in this matter.

B. Plaintiffs' Claims Are Not Barred Because They Failed to Exhaust Administrative Remedies.

Both Plaintiffs have filed claim forms in this matter that are in the process of being evaluated by the Division under R.C. 169.08. "The director completes an initial review of each claim * * * after it is filed. The director considers matters relevant to any claim and is authorized to subpoena witnesses and documents to effectuate property payment of any claim. The director may hold a hearing pursuant to division (B) of section 169.08 or the Revised Code to receive evidence concerning any claim if the director considers such hearing necessary, and such hearing will be held if requested by the claimant." *O.A.C. 1301:10-4-01(B); R.C. 169.08(B)*. If a claim is denied, the claimant may appeal such decision in the manner provided in R.C. Ch. 119. *O.A.C. 1301:10-2-02(A); R.C. 169.08(G)*. Any person adversely affected by a decision of the

Division may appeal the Division's decision to the court of Common Pleas. *R.C.* 119.12.

Defendants argue that because Plaintiffs have failed to exhaust the administrative remedies above, their claims here are barred. "It is a well-established principle of Ohio law that, prior to seeking court action in an administrative matter, the party must exhaust the available avenues of administrative relief through administrative appeal. *Noernberg v. Brook Park*, 63 Ohio St.2d 26, 29 (1980). The exhaustion of administrative remedies doctrine "requires that a party exhaust available administrative remedies prior to seeking court action in an administrative matter. *Waliga v. Coventry Twp.*, 2004-Ohio-5683, ¶12 (9th Dist. 2004); citing *Noernberg* at 29-30. Failure to exhaust administrative remedies is an affirmative defense. *State ex rel. CannAscend Ohio LLC v. Williams*, 2020-Ohio-359, ¶20. One exception to this general rule is that "exhaustion is not required if the administrative remedy cannot provide the relief desired or if resort to the remedy would be totally futile." *Id*, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 17 (1988).

Here, Plaintiffs seek declaratory judgment and injunctive relief under their first two claims. Plaintiffs allege that the amended Unclaimed Funds Law violates the Ohio Takings Clause in Count One and Ohio's Due Process Clause under Count Two. Defendants argue that the requirement to exhaust administrative remedies applies even in the context of constitutional challenges and even though the administrative body would not have the ability to hear constitutional challenges. Defendants cite to the following cases in support of their constitutional challenges argument: *State ex rel.*

Lieux v. Westlake, 154 Ohio St. 412 (1951); *Driscoll v. Austintown Associates*, 42 Ohio St.2d 263 (1975); and *Privonka v. Corcoran*, 2020-Ohio-3476.

Privonka is not applicable here. It did not involve any analysis of the doctrine of exhaustion of administrative remedies. Rather, the Ohio Supreme Court was asked to determine whether the common pleas court had subject-matter jurisdiction over a class action that sought declaratory judgment that former R.C. 5101.58, which relates to Medicaid reimbursements, was unconstitutional under the Supremacy Clause and the Ohio Constitution's single subject rule. The defendant argued that by statute, the plaintiffs' claims could not be brought in common pleas court. Both the trial and appellate court found that the statute at issue did not divest the trial court of subject-matter jurisdiction because: (1) the plaintiffs sought declaratory judgment that the statute was unconstitutional; and (2) because administrative agencies cannot decide the constitutional validity of a statute, it would be futile and impractical to require plaintiffs to first seek redress through the administrative process.

In reversing the trial and appellate court, the Court noted that the statute explicitly provided that the administrative process provided in the statute was the "sole remedy" available to those individuals. *Privonka* at ¶ 23. The Court held that "[b]ecause R.C. 5160.37 now provides the sole remedy for Medicaid program participants to recover excessive reimbursement payments * * *, we conclude that the common pleas court lacked subject-matter jurisdiction over the * * * plaintiffs whose claims for recovery fall within the statute's express language." *Id.* at ¶ 2. No such statutory language is present here. Defendants reliance on *Privonka* as a basis for argument under the doctrine of exhaustion of administrative remedies is misplaced.

In *Lieux*, a village zoning ordinance prohibited the erection of commercial greenhouses in residential districts without a special permit. The landowner's application for such a permit was denied by the village building commissioner. The zoning ordinance provided that the landowner had a right to a hearing before the Board of Appeals. Instead of requesting a hearing, the landowner filed an action for a writ of mandamus in the court of appeals on the ground that the ordinance as applied was unconstitutional. *Lieux* at 413. The Court held as follows:

It is a fundamental principle of law that constitutional questions will not be decided until the necessity for their decision arises. In the instant case, if the relator had followed the administrative remedy provided for in the ordinance, the village Board of Appeals might have given her a special permit. If such special permit were given to relator, then relator would not be prejudiced by the zoning ordinance which she seeks to have declared unconstitutional. Whether it will ever be necessary for this court to consider the constitutionality of this zoning ordinance, in order to determine relator's right to a building permit, cannot be determined until relator has exhausted the administrative remedies provided for by that ordinance.

Id. at 415.

The undersigned finds *Lieux* distinguishable from this matter because it involved a mandamus action and the constitutional challenge was based on the ordinance as applied.

Driscoll involved a landowner who filed an application with a township's Zoning Commission for a rezoning of its property to allow the building of multi-family dwellings. As an alternative the landowner could have, but chose not to, apply for a variance to the existing zoning. The administrative procedure for considering rezoning applications, set forth in R.C. 519.12, was followed whereupon the application was denied. The landowner filed a declaratory judgment petition in the Court of Common Pleas alleging the denial was unconstitutional. The court filed a judgment entry granting the petition

and ordered the zoning inspector to issue the necessary permits to the landowner. The judgment was not appealed.

Subsequently, township trustees and neighboring owners filed an action seeking an injunction, claiming that the court's declaratory judgment entry was void and that the use of the land for multi-family dwelling violated the zoning ordinance. The trial court dismissed the complaint ruling that the restrictive covenants were not being violated and that the doctrines of *res judicata* and estoppel prevented the trustees and owners from attacking the validity of the declaratory judgment order. The Court of Appeals affirmed the portion of the trial court's judgment relating to the restrictive covenants, but reversed the portion pertaining to the validity of the trustees and owners' right to contest the declaratory judgment order. Both sides appealed to the Supreme Court of Ohio.

The argument of the trustees and owners on appeal that is relevant in this matter was that the landowner's failure to seek a variance prior to instituting the declaratory judgment action was a jurisdictional defect. The Court referred to the doctrine of exhaustion of administrative remedies that is set forth in *Lieux* and referred to above. In rejecting the argument, the Court held that the doctrine of failure to exhaust administrative remedies is an affirmative defense, not a jurisdictional defect. *Driscoll* at 276. However, prior to their holding, the Court also noted that it has recognized at least two situations in which exhaustion of administrative remedies is not required prior to filing a declaratory judgment action challenging the constitutionality of zoning: (1) a situation in which there is not administrative remedy available which could provide the relief sought; and (2) a situation in which the administrative remedy is unnecessarily onerous. *Id.* at 275.

The undersigned finds *AEI Group, Inc. v. Ohio Dep't of Commerce, Div. of Sec.*, 67 Ohio App.3d 546 (10th Dist. 1990) persuasive to the facts of this matter. In *AEI*, the Ohio Department of Commerce, Division of Securities ordered a corporation, pursuant to O.A.C. 1301:6-3-15(I)(3), to submit an audited financial statement. When the corporation failed to comply timely, the Division of Securities issued a notice of opportunity for hearing requiring that the corporation show cause why its license should not be suspended. The corporation requested an administrative hearing pursuant to R.C. 119.09.

Like the present matter, the corporation filed a complaint for declaratory and injunctive relief prior to the administrative hearing. In its complaint, the corporation requested the trial court declare O.A.C. 1301:6-3-15 invalid based upon defects in its promulgation and that the rule violated Section 1, Article II of the Ohio Constitution. The corporation also requested the court declare the Division of Securities enforcement of the rule against the corporation unreasonable, arbitrary, and capricious.

The Division of Securities argued that the corporation's claims were barred by the doctrine of exhaustion of administrative remedies. The trial court agreed, and dismissed the case. The Tenth District reversed and held as follows in relevant part:

While the trial court found that dismissal was appropriate on the basis that plaintiff had failed to exhaust its administrative remedies which the trial court believed could potentially remedy plaintiff's complaints, no such exhaustion of administrative remedies is required if the administrative agency has no power to afford the relief sought. See *Kaufman v. Newburgh Heights*, 26 Ohio St.2d 217 (1971). Exhaustion of administrative remedies is not required where the constitutionality of a statute is raised as a defense in a proceeding brought to enforce a statute. *Johnson's Island v. Bd. Of Twp. Trustees*, 69 Ohio St.2d 241, 248-249 (1982).

In the present case, we agree with plaintiff that the trial court abused its discretion in dismissing its complaint for declaratory relief to the extent that

plaintiff challenged the constitutionality of various administrative rules being enforced by defendant. It is well established that an action for declaratory relief is a valid manner in which a court may exercise jurisdiction since constitutional arguments are not within an administrative agency's jurisdiction. *Roosevelt Properties Co. v. Kinney*, 12 Ohio St.3d 7, 8 (1984).

* * *

[I]n the present case, plaintiff specifically challenges the constitutional validity of the rules themselves as well as the constitutionality of defendant's own existence. R.C. 2721.03 specifically provides:

"Any person * * * whose rights, status, or other legal relations are affected by a * * * rule as defined in section 119.01 of the Revised Code * * * may have determined any question of construction or validity arising under such * * * rule * * * and obtain a declaration of rights, status, or other legal relations thereunder."

Accordingly, on the constitutional issues presented in this case, we find that the trial court erred in dismissing plaintiff's complaint in declaratory judgment.

AEI at 550-551.

In *State ex rel. CannAscend Ohio LLC v. Williams*, 2020-Ohio-359 (10th Dist.), the Court reiterated that "[a]bsent a challenge to the validity or constitutionality of the statute or regulation at issue, declaratory judgment is unnecessary to preserve a plaintiff's statutory rights when the legislature has provided an administrative remedy." *CannAscend* at ¶53.

Here, Plaintiffs have requested declaratory and injunctive relief claims predicated on the constitutionality of the amended Unclaimed Funds Law and its associated rules set forth in the O.A.C. Neither of the claims are on an as applied basis. Under *Driscoll*, *AEI*, and *CannAscend*, the exhaustion of administrative remedies is not required because the administrative remedy available to Plaintiffs could not provide the relief sought. Accordingly, the undersigned finds that Plaintiffs' claims are not barred by the doctrine of exhaustion of administrative remedies.

C. There is a Substantial Likelihood that Plaintiffs will Prevail on Their Claim that Defendants Violated Art. I, § 19, Ohio Constitution (Takings Clause)

Article I, § 19 of the Ohio Constitution states:

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for **public use**, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner. (Emphasis added.)

The private property at issue here are unclaimed funds being held in trust for the benefit of the rightful owners. The amended statute specifically provides that unclaimed funds held in the UFTF for ten years or more are “deemed abandoned and escheat to the state.” *R.C. 169.08(I)*. This is a significant revision to the program since its inception in 1967.

i. Plaintiffs have established that there is a taking.

In their Proposed Findings and Conclusions, Defendants combine and overlap their arguments against Plaintiffs’ claims under the Takings Clause and Due Process. Defendants first cite *Standard Oil v. New Jersey*, 341 U.S. 428 (1951). However, that case involved constitutional challenges to an escheat statute based upon the Due Process and Contract Clause of the Federal Constitution. In *Standard Oil*, the Supreme Court noted that “[a]s a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, belonging to unknown persons. Such property thus escapes seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations.” *Id.* at 436. However, these statements were made by the Court under its

analysis of the Contract Clause. Therefore, the undersigned finds *Standard Oil* does not apply to a determination of whether a taking occurred under the Takings Clause.

In *Webb's Fabulous Pharms. V. Beckwith*, a company entered into an agreement to purchase substantially all of the assets of a second company. *Webb's Fabulous Pharms v. Beckwith*, 449 U.S. 155 (1980). At closing, the seller's debts appeared to be greater than the purchase price. In order to protect itself as allowed under the Florida Bulk Transfers Act, ("Florida Act"), the purchaser filed a complaint of interpleader including as defendants the seller and the seller's creditors, and tendered the purchase price to the clerk of courts. The Florida Act also required the clerk of courts to deposit the purchase price in an interest-bearing account, but further provided that all "interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court * * *." *Id.* at 157, fn. 1. Due to conflict amongst state courts, the Supreme Court of the United States took jurisdiction to determine the constitutionality of the Florida Act under the federal Takings Clause. The Supreme Court stated that "[n]either the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the principal as "public money" because it is held temporarily by the court. * * * To put it another way: a State, by *ipse dixit*, may not transform private property into public property without compensation, even for the limited duration of the deposit in court." *Id.* at 164. The Court then held that ***under the narrow circumstances of this case***, the statute violated the Takings Clause where:

- 1) there is a separate and distinct statute authorizing a clerk's fee "for services rendered";
- 2) where the deposited fund itself concededly is private; and
- 3) where the deposit with the clerk was required by state statute in order for the depositor to avail itself of statutory

protection from claims of creditors. *Id.* (Emphasis added). The Court clarified that it was expressing no view as to the constitutionality of a statute that prescribed a county's retention of interest earned where the interest would be the only return to the county for services it renders. *Id.* at 165.

In a subsequent case, the Supreme Court of the United States struck down a New York law under the Takings Clause which provided that a landlord must permit a third-party cable television company to install its cable equipment on the landlord's property. *Loretto v. Teleprompter Manhattan Catv Corp.*, 458 U.S. 419 (1982). The lower court had upheld the law and found that the law served a legitimate police power purpose of eliminating conditions that inhibit the development of cable television which it found had important educational and community benefits. The Court disagreed, found a taking under the Takings Clause, and held that "the government does not have unlimited power to redefine property rights. *Id.* at 439, citing *Webb* ("a State, by *ipse dixit*, may not transform private property into public property without compensation").

Here, it appears that Ohio, *ipse dixit*, declared that certain unclaimed funds, including Plaintiff Reid's, are deemed abandoned by operation of law and escheat to the State. Nevertheless, Defendants argue that because the funds are now statutorily declared "abandoned"², there is no taking under *Texaco, Inc. v. Short*, 454 U.S. 516 (1982). In *Texaco*, owners of mineral interests had said interests severed from tracts of land in Indiana pursuant to the Dormant Mineral Interest Act ("DMIA")³. The DMIA

² "Abandoned property" is defined as "property over which the owner has relinquished all right, title, claim, and possession with the intention of not reclaiming it or resuming its ownership possession or enjoyment." *Parkhill Ltd. Liab. Co. v. Econ. & Smtly Dev. Inst., Inc.*, 2019-Ohio-3444 (11th Dist. 2019)., quoting *Perez Bar & Grill v. Schneider*, 2012-Ohio-5820, ¶32 (9th Dist. 2012).

³ Ind. Code §§ 32-5-11-1 through 32-5-11-8 (1976).

provided that the severed mineral interests not used for 20 years automatically lapsed and reverted to the current surface owner of the property unless the mineral owner filed a statement of claim in the local county recorder's office. *Texaco* at 518. The owners of the mineral interests challenged the constitutionality of the DMIA on several bases, including the following which are relevant in this matter: (1) that the lack of prior notice of the lapse deprived them of property without due process of law; and (2) that the statute effected a taking of private property for public use without just compensation.

The undersigned notes that the *Texaco* Court was specifically considering "whether the State has the power to provide that property rights **of this character** shall be extinguished if their owners do not take the affirmative action required by the State." *Id.* at 525 (Emphasis added.) There, the mineral owner's rights reverted to the surface owner, not to the State. The Supreme Court's analysis and ultimate holding was made based upon its reasoning in three of its previous cases: (1) *Hawkins v. Barney's Lessee*, 30 U.S. 457 (1831); (2) *Wilson v. Iseminger*, 185 U.S. 55 (1902); and (3) *Jackson v. Lamphire*, 3 Pet. 280.

In *Hawkins*, the Court upheld Kentucky's adverse possession law in a dispute between two private landowners. Referring to *Hawkins*, the *Texaco* Court remarked that "[f]rom an early time, this Court has recognized that States have the power to permit unused or abandoned interests in property to revert to another after the passage of time. In [*Hawkins*], the Court upheld a Kentucky statute that prevented a landowner from recovering property on which the defendant had resided for more than several years under a claim of right. The Court stated:

'Such laws have frequently passed in review before this Court; and occasions have occurred, in which they have been particularly noticed as laws not to be

impeached on the ground of violating private right. What right has any one to complain, then a reasonable time has been given him, if he has not been vigilant in asserting his rights?’

Texaco at 526, citing *Hawkins* at 466.

Wilson also involved a dispute between private owners. The *Texaco* Court, noted that “[s]imilarly, in [*Wilson*], the Court upheld a Pennsylvania statute that provided for the extinguishment of a reserved interest in ground rent if the owner collected no rent and made no demand for payment for a period of 21 years. Though the effect of the Pennsylvania statute was to extinguish a fee simple estate of permanent duration, the Court held that the legislation was invalid.” *Id.* at 527.

Lamphire also involved a dispute between private owners. The *Texaco* Court remarked that the statute at issue in *Texaco* was “similar in operation to a typical recording statute. Such statutes provide that a valid transfer of property may be defeated by a subsequently purported transfer if the earlier transfer is not properly recorded.” *Id.* at 528.

In addressing the mineral rights owners’ argument that the DMIA amounted to a taking of private property without just compensation, the *Texaco* court stated that “[t]he authorities already discussed mandate rejection of [this] argument.” *Id.* at 530. Immediately thereafter the Court held that “it follows that, after abandonment, the former owner retains no interest for which he may claim compensation. It is the owner’s failure to make any use of the property—and not the action of the State—that causes the lapse of the property right; there is no ‘taking’ that requires compensation. The requirement that an owner of a property interest that has not been used for 20 years must come forward and file a current statement of claim is not itself a ‘taking.’” *Id.* at 530.

The undersigned finds *Texaco* distinguishable from the current case where the State, not a private individual, is taking Plaintiffs' property. This is further supported by the *Texaco* Court's upholding the lower court's finding that no taking occurred:

The [lower Court] also rejected an argument that the statute effected a taking without compensation in violation of the State Constitution and state eminent domain theory, on the ground that the State did not acquire the mineral interests for its own use and benefit.

Id. at 524, fn. 15.

The Supreme Court of Ohio has previously addressed the issue of whether the Unclaimed Fund Act as amended in 1991 was unconstitutional under Ohio's Takings Clause. *Sogg v. Zurz*, 2009-Ohio-1526. In that amendment, R.C. 169.08(D) provided that "[i]nterest is not payable to claimants of unclaimed funds held by the state." *Id.* at ¶ 1. The *Sogg* Court noted that "the General Assembly may pass any law unless it is specifically prohibited by the state or federal Constitutions." *Id.* at ¶ 6, citing *State v. Warner*, 55 Ohio St.3d 31, 40 (1990). The Court found that nothing in the amended statute's language classified the unclaimed funds or the interest accrued thereon as "forfeited," "abandoned," or "escheated."; therefore, the Court concluded that the General Assembly had not plainly legislated that unclaimed funds are or can be deemed abandoned property. *Sogg*, at ¶9. The undersigned agrees with Defendants that the "Court left open the door to a different outcome had the statute been a true escheat statute, as it is now, and nowhere did it say or even suggest that a true escheat statute would be unconstitutional." [Defendants' Proposed Findings and Conclusions, p. 25]. Unfortunately, *Sogg* provides minimal guidance to the undersigned as to the issue in this case.

At the conclusion of the hearing, the undersigned requested the parties provide her with any and all states that have statutes similar to the amended statute at issue here that may provide any guidance, albeit non-binding, to the undersigned. Plaintiffs failed to provide any assistance in their Proposed Findings and Conclusions. Defendants on the other hand, indicate that Hawaii and Massachusetts have enacted statutes similar to the one in this case. [Defendants' Proposed Findings and Conclusions, pp. 25-26]. The undersigned disagrees that these States' statutes are analogous to the amended statute under scrutiny in this matter. Indeed, Hawaii's unclaimed property law provides that title, not just custody, to monies in its unclaimed funds trust funds escheat to the State and are transferred to the general fund after 10 years. [Id. at 26]. However, the undersigned does not give much weight to this because: (1) the statute only applies to funds with less than \$100; and (2) the statute has not been challenged. [Id.].

Defendants then refer to Massachusetts. Defendants provide that in Massachusetts, "immediately upon receipt of funds from holders, unclaimed funds '[v]est in the commonwealth.' *Norrigan v. Goldberg*, 772 F. Supp.3d 182 (D. Mass. 2025)." [Id.]. However, Defendants' simple statement above misstates *Norrigan*. *Norrigan*, like *Sogg*, addressed the Commonwealth's retention of interest when unclaimed funds were returned to the owner. The Court found that the unclaimed funds were abandoned, and therefore claimants were not entitled to the interest on the funds. However, In Massachusetts, the unclaimed funds deemed abandoned under the statute vests in the commonwealth as a custodian: "[any person claiming an interest in property surrendered to the state treasurer under the provisions of this chapter may establish his claim at any time." *Id.* at 188, citing *Mass. Gen Law ch. 200(A), § 10(a)*. The very nature of the statute

provides no guidance. Furthermore, the *Norrigan* Court also pointed out the overwhelming split in circuits in determining claimants right to interest under various unclaimed funds statutes, and that decision is currently on appeal.

Defendants than direct the undersigned to federal law regarding deposits of unclaimed failed bank funds. There, the Federal Deposit Insurance Corporation (“FDIC”) deposits said funds with respective state authorities if “an insured depositor fails to make a claim for * * * its insured or transferred deposit within 18 months after the [FDIC] initiates the payment of insured deposits[.] 12 U.S.C. § 1822I(2). If those funds go unclaimed for ten years, “the deposit shall be immediately refunded to the [FDIC] and become its property.” *Id.* 1822I(5). However, that provision has also not been challenged in Court.

Finally, Defendants’ argue that the undersigned should be swayed by the “dozens of states” that have escheat statutes wherein the states take ownership of personal property in the form of insurance company liquidation proceeds without notice or formal proceedings. However, those statutes hold no sway. Those liquidations involve court-supervised legal proceedings to wind down a failed business or insolvent insurance companies’ estates. Those estates must be closed to allow distribution of the assets to the companies’ creditors.

Based on all of the above, the undersigned finds that the amended Unclaimed Funds Act giving legal title to the State for funds that have been unclaimed for ten or more constitutes a taking under the Takings Clause.

ii. Plaintiffs have met their burden of establishing that the taking is not for a “public purpose.”

As an initial matter, Plaintiffs presented the testimony of Senator Paula Hicks-Hudson which the undersigned allowed over Defendants’ objection. The Senator’s

testimony was presented essentially as to the purpose of the taking and to voice her disapproval of the escheated unclaimed funds being used as a funding source under the amended statute. The undersigned notes that she is not considering the Senator's testimony in deciding this matter as she, as an individual member of the legislature does not speak for the Legislature as a whole. *Nichols v. Villarreal*, 113 Ohio App.3d 343, 349 (4th Dist. 1996); *see also State v. Toney*, 81 Ohio St.130, 140 (1909) (recognizing that a law "receives its vigor and force as law by reason of its enactment by the general assembly"); *Dublin v. State*, 138 Ohio App.3d 753, 761 (10th Dist. 2000) (Lazarus, J., concurring) ("nothing in the case law suggests that inquiry into the legislative intent and purposes of an enactment (beyond the language thereof) is appropriate in determining the validity of the legislation under any of the constitutional provisions raised in this case," and recognizing that "legislative intent and purpose of a statute cannot be based upon the expressions of any particular legislator").

With that understanding, R.C. Ch. 163 applies to the appropriation of property. R.C. 163.01(H)(1) statutorily defines "public use." It provides that taking via appropriation is not for "public use" if it is for the conveyance to a private commercial enterprise, for economic development, or solely for the purpose of increasing public revenue, "unless the property is conveyed or leased to one of the following:

- a. A public utility, municipal power agency, or common carrier;
- b. A private entity that occupies a port authority transportation facility or an incidental area within a publicly owned and occupied project;
- c. A private entity when the agency that takes the property establishes by a preponderance of the evidence that the property is a blighted parcel or is included in a blighted area."

Defendants argue that “the record indicates that the new community authority⁴, which is a public entity, will own the transformational major sports facility mixed-use project.” [Defendants Proposed Findings and Conclusions, pp. 5 and 29]. The undersigned disagrees. Rather, the amended statute provides that the new community authority will own the Browns’ stadium as the “major sports facility” which will be included in the Brook Park Project as the “transformational major sports facility mixed-use project.” In support of this argument, Defendants cite to Exhibit AH, R.C. 349.01, and the testimony of Plaintiff Reid.

R.C. 349.01(D) merely defines “new community authority” as “a body corporate and politic in this state, established pursuant to section 349.03 of the Revised Code and governed by a board of trustees as provided in section 349.04 of the Revised Code.”⁵ It provides no guidance as to ownership of the Stadium or Brook Park Project.

As to Plaintiff Reid’s testimony, Defendants incorrectly cite to the testimony of Senator Hicks-Hudson in the transcript, which the undersigned has stated she is not considering in this matter. Plaintiff Reid’s testimony showed that he had no independent knowledge of ownership; rather, his understanding as to ownership of the Stadium or Brook Park Project was clearly based upon word-or-mouth and news articles or reports.

⁴ At the time of the hearing, the new community authority had not yet been formed.

⁵ A “body corporate and politic is a governmental body or public corporation having powers and duties of government. * * * [I]t is a body” created by the state for political purposes and to act as an agency in the administration of civil government, * * * and usually invested, for that purpose, with subordinate and local powers of legislation.” *Hamilton Cty. Bd. of Mental Retardation and Developmental Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 150 (1989).

Finally, Defendants' Exhibit AH is a news article published on August 1, 2025, by Rich Exner with Cleveland.com. Mr. Exner reported that “[a]t the heart of the site plan is the creation of a “new community authority” – a public, non-profit entity to be created by Brook Park under Ohio law that would **own the stadium**, manage the lease and **oversee** broader site development.” [Ex. AH, pp. 3-4, (Emphasis added)]. Accordingly, Defendants own exhibit evidences that the community authority would only own the Stadium. It would not own the entire Brook Park Project; rather, it would merely oversee broader site development.

Absolutely no testimony was introduced as to who will own what in this matter. Accordingly, the undersigned must turn to the language of the amended statute. The amended statute provides that money in the Grant Fund “shall be used as performance grants for Ohio sports facility, and major sports facility projects in accordance with sections 123.281 * * *.” R.C. 123.282. R.C. 123.281(H) provides that State funds may be used as a grant to pay towards the construction cost for a “major sports facility.” Although that section provides that the major sports facility must be part of a “transformational major sports facility mixed-use project,” it does not give the State authority to use funds towards the “transformational major sports facility mixed-use project.”

The statute defines a “major sports facility” as a “stadium * * * that a governmental agency owns, will own, or has or will have a sufficient ownership interest in, the primary purpose which is to provide a site or venue for the presentation of home games of a professional sports franchise for a period of at least thirty years after completion of the construction of the stadium * * *.” R.C. 123.28(P). The stadium must

be part of the “transformational major sports facility mixed-use project,” aka Brook Park Project, but no such governmental agency ownership is required for the Brook Park Project under the statute. *R.C. 123.28(Q)*. As previously stated, the appropriation here does not permit the escheated funds to be used for the Brook Park Project.⁶ Therefore, the undersigned finds that the new community authority will only own the Stadium, not the remaining area in the Brook Park Project.

With that understanding, the plain language of the amended statute sets forth the State’s purpose for using the Grant Fund is economic in nature. *R.C. 123.281*.

Consistent with this finding, Defendants argued the following at the hearing:

Your Honor, also, in the context of public use, I think it’s worth mentioning that this, again, derives from Revised Code section 123.281(H), this funding is not a gift, it’s not a loan, it’s an investment. And as part of the investment, there’s an expectation of a return on that investment for the benefit of the citizens of the State of Ohio. The investment must be generated within 16 years, by statute⁷, and it is supposed to be secured with funds in escrow, which will amount – given the amount at issue, will amount to 50 million dollars in escrow as security for that investment. * * * Yeah. The legislation refers to an economic development project. That’s what this is.

[Tr. 310:11-311:12]. Moreover, Defendants indicate the following in relevant part in their Proposed Findings of Fact and Conclusions of Law:

The legislation specifically provides for an economic development project that will raise revenue. * * * Through the escheated funds, the State will put otherwise dormant funds to use to serve Ohio taxpayers.

The appropriation made in H.B. 96 is intended, in part, to raise revenue, and there are strict limitations on the appropriation.

* * *

⁶ H.B. 96 simply states that the State shall use the \$600,000 “to support construction of a transformational major sports facility mixed-use project **pursuant to section 123.281** of the Revised Code that is associated with a Brook Park economic development project * * *.” *Am.Sub.H.B. No 96 § 229.40* (Emphasis added). *R.C. 123.281* only allows State funds to be used towards the construction cost for the stadium. *R.C. 123.281(H)*.

⁷ *R.C. 123.281(H)(5)*.

Indeed, the construction of a public stadium serves more than just economic interests. It can increase civic engagement, provide cultural visibility on a national stage, promote local and state pride and belonging, and provide multitudinous other public benefits.

[Defendants Proposed Findings and Conclusions, pp. 32-33].

Based on the foregoing, the undersigned finds that the purposes advanced here are economic development and increasing public revenue. Accordingly, R.C. 163.01(H)(1)(b) must be applied in determining whether Plaintiffs funds in the UFTF were taken for “public use.” The new community authority will either own or have a substantial ownership interest in the Stadium and the land it sits on. The Stadium will be leased to a private entity, the Haslan Sports Group. As a result, the taking is only for “public use” if the Stadium occupies “an incidental area within a publicly owned and occupied project.” *R.C. 163.01(H)(1)(b)*.

The statute does not define what constitutes an “incidental area.” However, that term’s ordinary meaning is “subordinate to something of greater importance; having a minor role.” *Black’s Law Dictionary* 830 (9th Ed. 2009). The stadium would be incidental to the Brook Park Project, which must include a combination of retail, office, hotel, residential, recreation, structured parking, or other similar uses into one or more mixed-use developments. *R.C. 123.28(Q)*.

The problem for Defendants here is that, as stated above, the appropriation does not permit the escheated funds to be used for the Brook Park Project. Even if it did, the statute next requires that Brook Park be “public owned ***and occupied***” in order to be “public use.” *R.C. 163.01(H)(1)(b)* (Emphasis added). Neither the State nor the new community organization will own, let alone occupy, retail, office, hotel, and residential

buildings in the Brook Park Project. As such, the undersigned finds that the taking here is not for “public use” as it is defined in R.C. 163.01(H).

The undersigned notes that R.C. 163.01 was enacted after and in accordance with the Supreme Court of Ohio’s decision in *City of Norwood v. Horney*, 2006-Ohio-3799. In that landmark case, the Court found that in addressing the meaning of the public use clause in Ohio’s Constitution, it is not bound to follow the United States Supreme Court’s determination of the scope of the Public Use Clause in the federal constitution. *Norwood* at ¶ 65. The Court then held that “an economic or financial benefit alone is insufficient to satisfy the public-use requirement of [Ohio’s Taking Clause]. In light of that holding, any taking based solely on financial gain is void as a matter of law, and the courts owe no deference to a legislative finding that the proposed taking will provide financial benefit to a community.” *Id.* at ¶ 80. “Although economic factors may be considered in determining whether private property may be appropriated, the fact that the appropriation would provide an economic benefit to the government and community, standing alone, does not satisfy the public-use requirement of [Ohio’s Taking Clause].” *Id.* at paragraph two of the syllabus.

Applying R.C. 163.01(H)(a)(b) and *Norwood*, the undersigned finds the taking here was not for public use.

D. There is a Substantial Likelihood that Plaintiffs will Prevail on Their Claim that Defendants Violated Art. I, § 16, Ohio Constitution (Due Process).

Article I, § 16 of the Ohio Constitution states 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.” The Ohio Supreme Court has “recognized this provision as the equivalent of the

‘due process of law’ protections in the United States Constitution.” *Arbino v. Johnson*, 2007-Ohio-6948. The Due Process Clause of the Fourteenth Amendment to the United States Constitution states that no state shall deprive any person of life, liberty, or property, without due process of law.

Due process requires that deprivation of property by adjudication be preceded by notice and opportunity for hearing appropriate with the nature of the case. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Due process requires notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* at 314. If the identity or address of an interested party are known or reasonably ascertainable, the Due Process Clause requires that the party be given notice by mail or other means as certain to ensure actual notice. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 491 (1988). If the identity or address of an interested party are unknown and not reasonably ascertainable, notification by other means such as publication may be sufficient. *Mullane* at 317-318.

The notice requirements set forth in the Unclaimed Funds Law were not changed by H.B. 96. Under the statute, holders of unclaimed funds, like financial institutions, are required to review their books and records and submit unclaimed funds reports to the Division each year. *R.C. 169.03*. For property with a value of \$50 or more, to the extent known, holders must report the owners’ full names and last known addresses; the nature, identifiers, and description of the funds; the date when the funds become payable; and the owners’ social security number to the State. *R.C. 169.03(A)(2)*.

Before filing the unclaimed funds report, holders must “send notice to each owner of each item of unclaimed funds having a value of fifty dollars or more.” *R.C. 169.03(E)*.

That notice must satisfy the following requirements:

[1] set forth the nature and identifying number, if any, or description of the funds and the amount appearing on the records of the holder to be due the owner..., and [2] shall inform the owner...that the funds will, thirty days after the mailing of the notice, be reported as unclaimed funds under this chapter. [3] A self-addressed, stamped envelope shall be included with the notice, with instructions that the owner...may use the envelope to inform the holder of the owner’s...continued interest in the funds, and, if so informed before the date for making the report to the director, the holder shall not report the funds to the director. [4] The notice shall be mailed by [a] first class mail if the item of unclaimed funds has a value of fifty dollars or more but less than one thousand dollars and by [b] certified mail, return receipt requested, if the item of unclaimed funds has a value of [\$1,000] or more....

Id.

Additionally, the Division is statutorily authorized to audit holders of unclaimed property to confirm their compliance with R.C. 169’s requirements. *R.C. 169.03(G)*.

After the holder deposits property into the UFTF, funds are aggregated and maintained in the UFTF; they are not earmarked or designated for any particular person, nor are they kept in separate, owner-specific accounts. Securities and other intangible property are “converted to cash and the proceeds deposited as provided for other funds.” *R.C. 169.05(A)*.

Once property is deposited, anyone can look up all properties held in the UFTF via an online database. Further, the Division maintains an inventory of all properties held in the UFTF, which is available upon request. The Division also provides annual notice in November by publication within all 88 of Ohio’s counties. *R.C. 169.06(A)*. Akil Hardy, the Superintendent for the Division, testified as to the extensive community outreach taken by the Division to reunite funds in the UFTF with owners. He further testified that in some

circumstances, as determined by the supervisor of the Division's outreach section, direct, individualized notice is given to owners by mail. Neither the community outreach nor direct notice is required under the statute. Both Plaintiffs testified that they did not receive direct notice of their funds in the UFTF.

As to the amended statute, it does not require any notice be given to owners such as Plaintiff Reid that they had funds that were set to escheat to the State on January 1, 2026. Nor does it require any notice be given to the remaining owners such as Plaintiff Ling that they have funds that would escheat to the State after 10 years. The only notice provided to owners who will lose title to their funds after 10 years is done by the Division via: (1) community outreach efforts; and (2) the Division's website if an owner clicks on a "FAQ" tab and then subsequently on a "10 YEARS" tab that explains the ramifications of H.B. 96.⁸ [Ex. Z]. The amended statute does not even require minimal notice of the escheatment provided for in H.B. 96 via publication.

Accordingly, the undersigned finds that since the amended statute fails to require any notice be given that the State will take title to funds that have been unclaimed for ten or more years it violates the Due Process Clause. Based upon this finding, the undersigned will not address Plaintiffs' challenges that: (1) the statute fails to provide notice when holders transfer property into the UFTF; and (2) the statute only provides notice that individuals have property in the UFTF via publication.

IV. IRREPERABLE HARM TO PLAINTIFFS

To obtain a preliminary injunction, a plaintiff must prove that immediate and irreparable harm, loss or damage will result to the plaintiff if the preliminary injunction is

⁸ Neither of these are required by the amended statute.

not issued, and no adequate remedy at law is available to the plaintiff. *Sommer v. Mt. Carmel Health*, 10th Dist. Case No. 94APE07-1087, 1995 Ohio App. LEXIS 1300. “Irreparable harm consists of the substantial threat of material injury which cannot be compensated with monetary damages.” *Agrigeneral Co. v. Lightner*, 127 Ohio App.3d 109, 115 (3rd Dist. 1998). See also *Ritchhart v. Gleason*, 109 Ohio App.3d 652, 660 (4th Dist. 1996) (holding that there is no adequate remedy at law when damages are difficult to measure).

The undersigned agrees with the holding in *Bleick* which sets forth that irreparable harm may not be found based on a taking claim. The Court stated in relevant part:

In the injunctive relief context, “[a]s long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government’s action effecting a taking.” *Knick*, 588 U.S. at 201. “Today, because the federal and nearly all state government provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable.” *Id.* (emphasis added)[.]”

* * *

Plaintiffs argue that they will be irreparably harmed without an injunction because their constitutional rights will be violated and their property rights will be extinguished. * * * Defendants respond that Plaintiffs’ alleged injury can be compensated by monetary relief and therefore, does not constitute irreparable harm. * * *

* * *

But, with respect to takings claims, “it is black letter law that a Takings Clause violation does not constitute irreparable harm for purposes of obtaining injunctive relief because monetary damages is the proper remedy for such a violation.” *HAPCO*, 482 F. Supp.3d at 361 N. 131 (citing *Knick*, 588 U.S. at 201)

Bleick at 22 and 26.

However, unlike in *Bleick*, Plaintiffs here also seek injunctive relief based on a Due Process Clause claim, which the undersigned finds the amended statute violates. The

unconstitutional lack of notice creates a “potential irreparable injury in the form of a violation of constitutional rights.” *Planned Parenthood Asso. V. Cincinnati*, 822 F.2d 1390, 1400 6th Cir. (1987) (affirming preliminary injunctive relief). “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). “A finding that a constitutional right has been threatened or impaired mandates a finding of irreparable injury as well.” *Magda v. Ohio Elections Comm’n*, 2016-Ohio-5043, ¶ 38 (10th Dist.).

Relator has met its burden that it will suffer irreparable harm if an injunction is denied.

IV. HARM TO THIRD PARTIES AND PUBLIC INTEREST FACTORS

The third and fourth factors ask the undersigned to weigh the effect on third parties and the general public interest in granting the requested injunction, and these factors are often treated together. *Keefe v. Ohio Dep’t of Job & Family Services*, 2003-Ohio-6557, 19 (10th Dist.). The undersigned must determine whether the injunction would cause unjustifiable harm to others and whether it would serve the public interest.

In their Motion for Temporary Restraining Order and/or Preliminary Injunction Plaintiffs make the following arguments:

The balance of equities strongly favors injunctive relief. Plaintiffs seek only to preserve the status quo and prevent the State from divesting private property rights without complying with the Ohio Constitution. Granting * * * injunctive relief will not deprive the State of any property, impair any essential governmental function, nor will it prevent Defendants from administering the unclaimed funds program in a lawful manner.

* * *

The public interest is likewise served by enforcing constitutional limits on governmental power and ensuring that private property is not taken without

due process of law. * * *Preserving the status quo pending judicial review therefore advances, rather than harms, the public interest.

[Plaintiffs' Motion, p. 9 and 10].

Defendants' counterargument in their Memorandum Contra is as follows:

The citizens of the State of Ohio will be unjustifiably harmed if an injunction issues, and the public interest will not be served by an injunction.

* * *[A]n injunction is not in Ohio's citizens' best interest because: (1) H.B. 96 provides for an economic development project that will raise revenue; and (2) the State and its citizens have an interest in ensuring that duly enacted laws are allowed to take effect.⁹

The undersigned finds that the third and fourth factors weigh in favor of granting a preliminary injunction.

Based on the foregoing and on an equitable balancing of the four factors for determining injunctive relief, the undersigned finds that Plaintiffs' motion for a preliminary injunction has merit. In so finding, the undersigned recognizes that the State may have a right to take possession of funds in the UFTF which will clearly never be claimed by the rightful owner. If not taken, a significant amount of these funds will inevitably languish in perpetuity benefiting no one. The undersigned's Decision does not condone the inevitable waste of valuable resources that could have a significant impact for the good on Ohio's citizens. However, the taking to accomplish such good must be for a public use and comply with due process requirements. Here, the amended statute fails in both aspects.

⁹ Defendants refer to *Bleick*: "Defendants respond that the requested injunction will harm the state of Ohio's interest in enforcing its laws without interference from the federal government and that Chapter 169 of the Ohio Revised Code benefits the public by putting otherwise dormant funds to use." *Bleick* at 29.

DECISION

Based on the Findings of Fact and Conclusion of Law set forth above, Plaintiffs' request for a Preliminary Injunction should be **GRANTED**. Defendants should be preliminarily enjoined from certifying, transferring, diverting, reclassifying, liquidating, or otherwise expending funds held in the Ohio Unclaimed Funds Trust Account. The preliminary injunction should provide that, notwithstanding the foregoing, nothing in the preliminary injunction order shall be construed to prohibit the division from continuing to administer the Ohio Unclaimed Funds Trust Fund in custodial capacity, including the routine processing and payment of approved claims and ordinary administrative expenses.

Counsel for Plaintiffs shall prepare and submit a Judgment Entry to Judge Lynch pursuant to Local Rule 25.01.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV.R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV.R. 53(D)(3)(b).

Copies electronically to all counsel of record.

Franklin County Court of Common Pleas

Date: 03-09-2026
Case Title: JOHN REID ET AL -VS- SHERYL MAXFIELD ET AL
Case Number: 25CV010760
Type: MAGISTRATE DECISION

So Ordered

A handwritten signature in black ink, appearing to read "Jennifer D. Hunt", is written over a faint, circular official seal of the Franklin County Court of Common Pleas. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" in the middle, and "ALL THINGS ARE" at the bottom.

/s/ Magistrate Jennifer D. Hunt