In the

Supreme Court of Ohio

THE BUCKEYE INSTITUTE ET AL.,	:	Case No. 2022-0052
Appellant,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	
MEGAN KILGORE ET AL.,	:	Court of Appeals Case No. 21AP-193
Appellees.	:	

MEMORANDUM OF AMICI CURIAE HOUSE MAJORITY FLOOR LEADER WILLIAM SEITZ ET AL. IN SUPPORT OF JURISDICTION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Supreme Court of Ohio

Ohio Courts of Appeals

Ohio Board of Tax Appeals

Ohio Statutes and Constitutional Provisions

Other Authorities

INTRODUCTION

When the COVID-19 Pandemic ("Pandemic") hit the United States in March 2020, Ohio government authorities reacted swiftly to take steps intended to control and limit the spread of the COVID-19 contagion. On March 9, 2020, Governor Mike DeWine issued Executive Order 2020-01D declaring a state of emergency due to the Pandemic. In response to this declaration, beginning on March 22, 2020, Dr. Amy Acton, Director of the Ohio Department of Health issued the first in a series of Director Stay-at-Home Orders, which ordered all persons to stay at home unless engaged in essential work or activity. At the time, it was generally expected the Orders would last only a couple of months.

Ohioans and Ohio businesses strived to comply with the Director's Orders. Although excepted from the Stay-at-Home Order, many businesses that were engaged in essential work (such as employees of insurance companies, financial institutions, and law and accounting firms) voluntarily asked employees to work at home when possible.

Businesses that sent their employees to work from home (whether in compliance with the Stay-at-Home Order or as a voluntary action) faced a daunting challenge due to the unique nature of Ohio's municipal income tax system. While the municipal income tax system in Ohio is fraught with complications, as a general concept, employers must withhold municipal income tax for the municipality (or municipalities) in which their employees work on more than twenty days in a calendar year. Without legislative relief, employers that sent workers home faced the daunting task of identifying in which municipality their employees would "work from home" during the pandemic, registering for withholding accounts with each such home municipality, adjusting their payroll withholding systems, and then withholding tax for each such home municipality. The complexity of these required tasks would have been exacerbated because the employer's payroll or tax department personnel were working remotely to avoid spreading the

COVID-19 virus. Further, many municipal income tax officials were also not working at their offices, thereby making it difficult to begin withholding for those other municipalities.

Fortunately, the Ohio General Assembly provided immediate relief for employers on the municipal income tax withholding dilemma. Specifically, Section 29 of Am. Sub. H.B. 197 ("Section 29") provided employers immediate relief from the municipal income tax withholding problems described above by providing that a "day" worked at an employee's home during the Pandemic could be treated as a "day" worked at the employee's principal place of work for municipal income tax withholding issues. Therefore, twenty-one days into the Pandemic, employers would not need to begin withholding municipal income tax to the work from home location and could simply continue to withhold tax and remit tax to the principal place of work municipality. The General Assembly's choice to use the word "day" in Section 29 is significant, as will be discussed herein, because "day" has a technical meaning that is relevant in only one area of municipal taxation – withholding. Specifically, the word "day" only matters with respect to an employer withholding safe harbor that employers are permitted to use to avoid withholding tax for certain occasionally entered municipalities.

Unfortunately, Columbus and many other municipalities have expanded their interpretation and application of Section 29 beyond its actual purpose, but perhaps more importantly, beyond its actual language. As a result, taxpayers are being subjected to tax on income not earned in principal place of work municipalities, and bedroom/home communities are being denied appropriately due municipal income tax for worked performed at home.

STATEMENT OF INTEREST OF AMICI CURIAE

The Amici Curiae, House Majority Floor Leader William Seitz, House Majority Whip Don Jones, House Majority Assistant Whip Cindy Abrams, House Ways and Means Committee Chair Derek

Merrin, House Financial Institutions Committee Chair Kris Jordan, and Senate Small Business and Economic Opportunity Committee Vice-Chair George Lang were members of the Ohio General Assembly when Section 29 was enacted. Amici's primary interest is that the original intent and plain language of the legislative language was not recognized and properly applied in this case by the Tenth District Court of Appeals. This fundamental failure will likely adversely affect hundreds of thousands of Ohio citizens who could be deprived of rights to obtain refunds of tax remitted to municipalities by their employers when the income upon which that tax was withheld and paid to those municipalities is not taxable by those municipalities. As discussed below, Section 29 only applied to employer withholding. It was not intended to apply to taxability of wages earned by taxpayers, i.e., Section 29 was not intended to provide that an employee's wages could be taxed by a municipality other than that in which the wages were earned (other than the employee's residence municipality).

STATEMENT WHY THIS CASE INVOLVES A MATTER OF PUBLIC OR GREAT GENERAL INTEREST AND A SUBSTANTIAL CONSTITUTIONAL QUESTION

The decision of the Tenth District Court of Appeals, if left standing, will adversely affect potentially hundreds of thousands of Ohio workers who worked remotely during the Pandemic. The Tenth District's holding that the wages of these remote workers could be taxed by their principal place of work municipality even if the workers did not perform work in those municipalities, in addition to raising a substantial constitutional issue, is fundamentally flawed because it is based on a gross misinterpretation of Section 29. Section 29 was enacted solely to provide relief for employers from the significant difficulties that would have resulted from the requirement that they change their withholding systems to withhold for the municipalities where the workers worked remotely rather than the regular workplace municipalities for the relatively short period covered by Section 29. Section 29 did not change, and was not intended to change, the fundamental rule that an employee's wages are taxable by the municipality in which the

employee earns those wages. Because this fundamental misreading of Section 29 could impact hundreds of thousands of Ohio workers, this case involves a matter of public or great general interest.

In the recent biennial budget bill, Am. Sub. H.B. 110, the General Assembly was able to address this problem for the then open Tax Year 2021 to clarify that Section 29 was only intended to apply to municipal income tax withholding provisions and was not relevant in deciding where the income was ultimately taxable to the wage-earning employees.[1] However, the Court, whether in this case or the next, will be required to resolve the taxability issue for Tax Year 2020 that will affect a great number of Ohio taxpayers. We encourage the Court to accept jurisdiction and hold that the actual language used in Section 29 merely allowed employers to continue to withhold to the principal place of work municipality instead of withholding to the bedroom/home municipality for what most authorities believed would be a period of a couple of months.

Even if Section 29 could be read as having attempted to allow a municipality to impose tax on wages of an employee that were not earned for services performed in the municipality (notwithstanding its deliberate use of the technical term "day" which indicates that is not the correct interpretation), such attempt does not survive the Ohio and U.S. Constitution's Due Process Clauses, because it would result in illegal extraterritorial taxation.

Accordingly, this case involves both a matter of public or great general interest and a substantial constitutional question.

[1] In Am. H.B. No. 110, Sections 610.115 and 757.40 stated that Section 29 of Am. Sub. H.B. 197, as amended by Am. H.B. No. 110, applied only for withholding purposes and the 20-Day Occasional Entrant Withholding Exception with respect to Tax Year 2021, and that Section 29 did not apply for purposes of determining the employee's ultimate tax liability. The General Assembly specifically chose not to address Tax Year 2020's taxability issue in Am. H.B. No. 110 because Tax Year 2020 was a closed Tax Year and because actions had already been commenced in the judicial system, thereby deferring such decision to the judiciary.

ARGUMENT

Proposition of Law No. 1:

While the Tenth District Court of Appeals properly determined that the General Assembly had authority under the Ohio Constitution to enact Section 29 of Am. Sub. H.B. 197, the Court of Appeals failed to properly interpret and apply the technical language of Section 29, which applies only to the withholding obligations of employers and not to where an employee's wages are taxable.

1. Ohio's General Municipal Income Tax Withholding Rule – R.C. 718.03.

Under Ohio's Home Rule provision and R.C. 715.013, Ohio municipalities have broad authority to impose an income tax, so long as that tax is done in accordance with the provisions and limitations provided in Chapter 718 of the Ohio Revised Code. The General Assembly has authority to limit municipal taxation, but not to expand it. Ohio Constitution Art. XIII, Sec. 6; Art. XVIII, Sec. 13., *Athens v. McClain,* 163 Ohio St.3d 61, 2020-Ohio-5146.

If a municipality imposes an income tax, employers are generally required (unless the 20-Day Occasional Entrant Withholding Exception applies as a safe harbor or if other exceptions apply) to withhold tax on all qualifying wages earned for services performed in such municipality, whether for one day, one hour or one minute. It is the actual amount of wages earned while **in** the municipality that is generally taxable. This is often referred to as the "General Withholding Rule." R.C. 718.03.

2. 20-Day Occasional Entrant Withholding Exception – R.C. 718.011.

Employees may occasionally work in multiple municipalities throughout the year. To alleviate the burden of withholding taxes in all occasionally entered municipalities as required under the General Withholding Rule in R.C. 718.03, employers may instead choose to withhold to the employee's "principal place of work" for time worked in other municipalities so long as the employee has not spent more than twenty days working within such occasionally entered municipality. This exception to the General Withholding Rule is contained in R.C. 718.011 and is referred to as the 20-Day Occasional Entrant

Withholding Exception (hereinafter "20-Day Withholding Exception"). The 20-Day Withholding Exception has been part of the law since Tax Year 2016. See Sub. H.B. 5 from the 130th General Assembly.

R.C. 718.011's entire purpose is to establish an employer withholding convenience and de minimis rule, whereby employers are relieved from withholding tax for a particular municipality unless their employees spend at least twenty-one days performing services within that municipality. In "counting to twenty-one days," the law provides that certain tasks are deemed to occur at the employee's "principal place of work" for purposes of counting any particular "day" as having been within a particular municipality (or not). However, those enumerated activities are deemed to occur at the principal place of work only for purposes of the twenty-day safe harbor. Nowhere in the entirety of Chapter 718 is there any provision that states that those "deemed" activities are where the income was **earned** by the employee for purposes of imposing municipal income tax. *Tammy Aul Jones v. City of Massillon*, BTA No. 2018-2173 (Mar. 29, 2021), 2021 WL 1270305.

3. Withholding Does not Determine Where the Income is Taxed.

It is longstanding policy that withholding responsibilities of an employer are distinct from the taxability of the income for the employee. The Ohio Board of Tax Appeals recognized this difference in *Tammy Aul Jones v. City of Massillon*. In *Jones*, the taxpayer was a non-resident of Massillon, Ohio, and reported to work at the United States Postal Service ("USPS") office located within Massillon each calendar day, would perform some work there, and then drive a postal vehicle that was loaded at the Massillon office along a designated route to deliver letters and packages to addresses outside of Massillon's boundaries. Of the Taxpayer's time working for the USPS, 40% was performed within Massillon and 60% was performed outside of Massillon consistently on each calendar day.

Massillon claimed that it was entitled to tax the entirety of Jones' wages because the Massillon office was her principal place of work under R.C. 718.011(A)(7). In deciding against the City of Massillon

and finding that only 40%, not 100%, of Jones' wages could be taxed by Massillon, the Board of Tax Appeals also observed that:

> R.C. 718.04 allows the municipality to levy an income tax and a withholding tax, and while the two are related, they are distinct, and each has its own set of requirements. For instance, the statute relied on by Massillon, commonly referred to as the "occasional entrant rule," provides a safe harbor for employers from the withholding requirement when the employee performs work in more than one location and spends twenty or fewer days in the taxing municipality. These rules do not define the employee's income tax liability and only reference the employer's duty (or lack thereof) to withhold. *Jones*, at 4.

The Board of Tax Appeals, Ohio's quasi-judicial body that hears most Ohio tax appeals, recognized that the 20-Day Withholding Exception provided in R.C. 718.011 applies only to withholding responsibilities of the employer and does not determine ultimate taxability of the wages of the employee. Since R.C. 718.011 solely addresses employer withholding issues, the City of Columbus's view on the meaning of Section 29, which addressed R.C. 718.011 and employer withholding, is misplaced.

4. R.C. 718.011(B)(2), sometimes referred to as the "preponderance of the day" test, highlights that the term "day" only applies in the context of withholding because without it one minute spent working in a municipality could count for being one "day" for purposes of the 20-Day Withholding Exception.

To determine whether an employee who has worked in an occasionally entered municipality on a portion of any given calendar day should be treated as working for a "day" there (for purposes of counting to twenty-one days), R.C. 718.011(B)(2) provides a "preponderance of the day" test. R.C. 718.011(B)(2) was enacted as part of the 20-Day Withholding Exception to determine when a "day" is counted against the 20-day threshold for a particular municipality. It provides, "For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day." Note that it states, "For the purposes of division (B)(1), ***," which is the 20-Day Withholding Exception. The City of Columbus is effectively interpreting R.C. 718.011 and Section 29 as a taxing provision, or in the alternative, as a situsing of where

income was earned provision, but that is not what R.C. 718.011 or Section 29 says or means. R.C. 718.011 is not a taxing provision, nor does R.C. 718.011 situs where income is earned for purposes of imposing tax. It is a safe harbor to simplify employer withholding. It clearly states that the deemed location is "for purposes of division (B)(1)" - (where the 20-Day Withholding Exception is codified) and does not determine the ultimate taxability of the wages in the hands of the employee.

5. Language of Section 29 of Am. Sub. H.B. 197 Has Been Ignored

Although not required to use the protections provided by the 20-Day Withholding Exception, many employers could initially use the 20-Day Withholding Exception to avoid collecting municipal income tax for the home municipalities for the first twenty days of employees working at home during the Pandemic. However, twenty-one days into the Pandemic, R.C. 718.03 (the General Withholding Rule) would require employers to begin withholding municipal income tax for the home municipalities because the protections of the 20-Day Withholding Exception would have been exceeded in the work from home municipality. This would have imposed a massive burden on employers because of the vast number of employees who began working at home during the Pandemic and because the employer's payroll and tax department personnel were not in the office and did not have the resources necessary to begin the withholding of tax in the work from home municipality that would otherwise have been required if not for Section 29.

The General Assembly addressed this practical problem of the Pandemic by expanding the 20-Day Withholding Exception to deem any "day" worked from home because of the Pandemic as a "day" worked in the employee's principal place of work. This is illustrated by the first phrase of Section 29, which provides, "Notwithstanding R.C. 718.011," i.e., notwithstanding that the employee worked more than twenty days in the home city.

Following that phrase, Section 29 continues, "and for purposes of Chapter 718." The reason this language is necessary is that wages withheld to the principal place of work impact other provisions of the

municipal income tax that relate to R.C. 718.011. For example, R.C. 718.02(A)(2), dealing with the apportionment of wages for net profit tax purposes, directly refers to R.C. 718.011.

Section 29 of Am. Sub. H.B. 197 provides in part that:

> Any "day" on which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of the declaration shall be deemed to be a "day"' performing personal services at the employee's principal place of work.

The effect was to clearly ensure that the twenty-day threshold in R.C. 718.011 would not be exceeded in the home municipalities amidst the Pandemic, thereby allowing employers to continue to simply withhold to the principal place of work municipality.

6. Columbus and the Court of Appeals have ignored the technical meaning of the words used in Section 29 of Am. Sub. H.B. 197.

Municipalities assert Section 29 applies to determine the taxability of the wages earned by employees. However, that interpretation is clearly not justified. The term "principal place of work" only has meaning in the context of the 20-Day Withholding Exception (i.e., withholding) provided in R.C. 718.011. Nowhere else in Chapter 718 is "principal place of work" relevant, nor is the use of the word "day" relevant.

If the General Assembly had intended to deem taxability to be in the principal place of work municipality for non-residents of that municipality, it would have used language from Chapter 718 that provides the determination of what is the "income" of a non-resident that is taxable by a municipality. R.C. 718.01(A) defines "municipal taxable income" to mean "income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situsted to the municipal corporation under section 718.02 of the Revised Code." Then, R.C. 718.01(B)(2) defines "income" to be "all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received

by the nonresident for work done, services performed or rendered, or activities conducted **in** the municipal corporation." In short, a non-resident is only taxed on income earned in the municipality.

If the General Assembly had intended to deem an employee's wages as "taxable" in the municipality (in the hands of the employee), it would have stated something more akin to the "wages are deemed earned in the principal place of work." The General Assembly did not do that. Instead, it used a technical tax term referred to in Chapter 718 and merely characterized a "day" worked in the home municipality as a "day" worked in the principal place of work. This language is technical and only has context in Chapter 718 regarding employer withholding responsibilities and the 20-Day Withholding Exception. The term "day" cannot have both a technical meaning, as is clearly the case here, and be used by municipalities as applying its general meaning.

7. **Columbus' and the Tenth District's Interpretation and Application of Section 29 of Am. Sub. H.B. 197 Would Have Unintended Consequences Amidst the Pandemic.**

If the municipalities are correct in their interpretation that the language of Section 29 that provides, "shall be deemed to be a day performing personal services at the employee's principal place of work," it would create more problems than solutions, which the General Assembly did not intend. Examples of such complications that follow from Columbus' and the Tenth District's application of Section 29 include:

- Employers that followed the General Withholding Rule prior to the Pandemic and withheld tax for each municipality in which their employees worked would have needed to change their payroll systems and begin withholding tax on all wages to the employee's principal place of work. The 20-Day Withholding Exception is elective, and not required for employers, and Columbus' interpretation flips it on its head by asserting that it is a mandatory (and taxing) provision.
- To simplify withholding, employers and municipalities often have withholding agreements that deem how much of each employees' wages are earned among various municipalities. In this way, employers simply withhold that percentage of each pay period, regardless of where the employee

works. If the language of Section 29 is as broad as Columbus maintains, employers would have been required to cancel those agreements amidst the Pandemic, increase withholding to the principal place of work municipality, and decrease it to other municipalities.

- Under continuing law, the 20-Day Withholding Exception does not apply to professional athletes, and the professional teams must withhold tax, beginning on day one, for each municipality in which the professional athletes work, regardless of the 20-Day Withholding Exception described above. However, under Columbus' and the Tenth District's application of Section 29 as being a taxing provision, the athletes of the professional sports teams would owe tax on 100% of their salaries to their principal place of work municipalities, as opposed to where they performed services (playing games and practicing, for example). For example, when the Cincinnati Reds visited the Cleveland Indians (now Guardians) for two games in August of 2020 at the Indians ballpark in Cleveland, Ohio, the City of Columbus' and the Tenth District's application of Section 29 would have the Reds ballplayers owing the City of Cincinnati tax for services performed in Cleveland, even though Cleveland should be able to tax that income of the Reds ballplayers in Cleveland. Furthermore, both the Reds and the Indians ballplayers would owe <u>all</u> their municipal income tax to Cincinnati and Cleveland, respectively, for <u>all</u> their income for the entire period of 2020 after March 10, 2020, even income for services performed in different states, let alone not being performed at their home ballparks.

8. R.C. 718.01(B)(2) states that no Ohio municipality may tax a non-resident on income earned outside the municipality's borders.

R.C. 718.01 provides, in part, that "(B) 'Income means * * * (2) In the case of nonresidents, all income, salaries, qualifying wages, * * * earned or received by the nonresident for <u>work done, services performed or rendered, or activities conducted **in** the municipal corporation</u>." A bedrock principle of taxing non-residents in a multi-jurisdictional context is that the income must be earned

by the non-resident ***within*** the taxing municipality that seeks to tax that income. R.C. 718.01(B)(2) states that in no uncertain terms. It uses the phrase "conducted in the municipal corporation" to limit the tax base for the imposition of a municipal tax to income derived within the municipal corporation.

R.C. 718.01(B)(2) does not state that wages earned on any "day" of performing personal services are subject to tax. Further, Section 29 only deems that a "day" spent working at the employee's home is a "day" of performing personal services at that location for purposes of the 20-Day Withholding Exception. Section 29 clearly does not amend R.C. 718.01(B)(2) to provide that a nonresident's qualifying wages are deemed "earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation," to parrot the words of R.C. 718.01(B)(2).

9. Section 29 of Am. Sub. H.B. 197 was an express act of limitation, under the Ohio Constitution Art. XIII, Sec. 6 and Art. XVIII, Sec. 13, limiting the ability of the home/bedroom communities to require employers to withhold tax to the home/bedroom communities after working from home during the Pandemic for greater than twenty days.

The City of Columbus and the Court of Appeals' interpretation of Section 29 misunderstands the words the General Assembly used. The General Assembly did not expand municipal taxation by seeking to allow the principal place of work municipalities (here Columbus) to impose tax on income earned in the home/bedroom communities. Rather, the General Assembly imposed a limitation for withholding purposes, with respect to the home/bedroom communities. As mentioned above, "day" only affects the 20-Day Withholding Exception. The limitation enacted was very simple – the home/bedroom communities could not force employers to withhold tax for those home/bedroom communities because the General Assembly made that 20-Day Withholding Exception broader. The 20-Day Withholding Exception was the only provision of law that was affected

by Section 29. Any assertion that Section 29 expands the ability of Columbus or any other municipality to tax income not earned inside the municipality would not be a limitation and instead would mean the General Assembly was "requiring" municipalities to tax income not supported by statute or ordinance. *Gesler v. Worthington Income Tax Bd. of Appeals,* 138 Ohio St.3d 76, 2013-Ohio-4986.

Proposition of Law No. 2

> *Under the Due Process Clause of the Ohio and U.S. Constitutions, and the Ohio Supreme Court's Decision in Hillenmeyer v. Cleveland Bd. of Rev., an Ohio municipality may not tax a non-resident on income earned outside the municipality's borders.*

1. *Hillenmeyer* controls.

Hillenmeyer v. Cleveland Bd. of Rev., 144 Ohio St.3d 165, 2015-Ohio-1623, reconsideration denied, *Hillenmeyer v. Cleveland Bd. of Rev*, 143 Ohio St. 3d 1407, 2015-Ohio-2747, cert. denied 577 U.S. 976 (2015), is dispositive of the issue in this case. The Court states, at ¶ 46, "Due process requires an allocation that reasonably associates the amount of compensation taxed with work the taxpayer performed within the city." In finding that Cleveland's method of taxing professional athletes violated the Due Process Clause of the U.S. Constitution, the Court stated that "Cleveland's power to tax reaches only that portion of a nonresident's compensation that was earned by work performed in Cleveland. The games-played method reaches income that was performed outside of Cleveland, and thus Cleveland's income tax as applied is extraterritorial." Id. at ¶ 39. The Court held that "Cleveland's games-played method imposes an extraterritorial tax in violation of due process, because it foreseeably imposes Cleveland income tax on compensation earned while Hillenmeyer was working outside Cleveland." Id. at ¶ 49.

2. Three other municipal income tax cases, *Wardrop, Vonkaenel*, and *Tolliver*, conclude that employees may only be taxed by municipalities on the income earned in the taxing jurisdiction.

The City of New Philadelphia enacted a municipal income tax ordinance that sought to tax "all payments made through a New Philadelphia employment or business address without any allocation to time spent working outside New Philadelphia compared to time working within New Philadelphia." Several U.P.S. workers, all of whom were non-residents of New Philadelphia, challenged the ordinance because the city sought to tax the portion of the income that they earned outside the city limits while delivering packages for U.P.S. The Fifth District Court of Appeals agreed that the city's tax provision was invalid, stating "we hold that the (city's ordinance) is unconstitutional to the extent that it imposes an income tax on the portion of the appellants' salaries attributable to work performed outside (the city)." *Stephen W. Vonkaenel v. City of New Philadelphia, Ohio*, 01-LW-0360, 2000AP 04 0041 (5th Dist. 2001).

The City of Middletown also sought to tax the income of non-resident individual taxpayers that was earned outside the city limits of Middletown. The Twelfth District Court of Appeals found that the city could not tax the individuals for work performed when they were outside the city. The ordinance at issue in that decision, as does R.C. 718.01(B)(2), stated that the tax was imposed "for work done or services performed or rendered in the City." *Wardrop v. City of Middletown Income Tax Rev. Bd*., 2008-Ohio-5298, CA2007-09-235 (12th Dist. 2008) found that the individuals could only be taxed for work done "in" the City, as opposed to on all of their income, wherever it was earned. In another case involving the City of Middletown, the city sought to tax all the income of non-resident truck drivers who did not work their entire work day within the City of Middletown. The Twelfth District Court of Appeals concluded that Middletown could not tax all the income and stated:

> [T]he city of Middletown did not validly exercise its power to tax under Section 890.03(a)(2) and violated the due process clause to the extent that the tax was imposed on the MG Drivers' salaries attributable to "work done" outside the city of Middletown. * * * Accordingly, the tax liability of the MG Drivers is limited to

> their salaries attributable to "work done" within the city of Middletown. Having concluded that not all of their hours worked in 1997 were subject to the city of Middletown's income tax, we find that the MG Drivers are entitled to a refund based upon the hours that they were taxed for "work done" outside the city of Middletown. *Toliver v. City of Middletown*, Butler App. No. CA99-08-147 (12th Dist. 2000).

CONCLUSION

The General Assembly had the authority to do what it did in modifying the 20-Day Withholding Exception because of the Pandemic. The City of Columbus misinterpreted what the General Assembly enacted by misunderstanding the use of the word "day" and how it applies throughout Chapter 718 of the Revised Code. Even if the City of Columbus' interpretation were correct, the Due Process Clause prohibits a taxing authority from taxing wages earned outside the taxing authority's jurisdiction.

For the foregoing reasons, this is a case of public or great general interest and involves a substantial constitutional question. Therefore, the Court should accept jurisdiction to review the Tenth District's decision.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Amici Curiae, William Seitz et al. in Support of Jurisdiction was served this 14th day of January 2022, by e-mail on:

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