

IN THE SUPREME COURT OF OHIO

JOSH SCHAAD : Ohio Supreme Court Case # 2022-0316
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 :
 Plaintiff-Appellant, :
 :
 :
 v. : On Appeal from the Hamilton County Court
 : of Appeals; First Appellate District
 : Case No. C-2100349
 :
 :
 KAREN ALDER, et al.. :
 :
 :
 Defendants-Appellees. :

**AMICUS BRIEF OF THE CITY OF LEBANON, OHIO
IN SUPPORT OF APPELLANT JOSH SHAAD**

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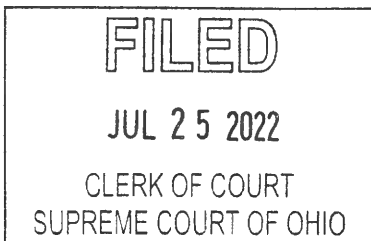


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INTRODUCTION AND STATEMENT OF AMICUS INTEREST

The City of Lebanon, Ohio (hereinafter “City”) and its officials have a vested interest in defending its citizens from unjust taxation. Many residents of the City work outside the City in towns like Cincinnati, Ohio. The City has a one percent (1%) income tax on its residents, granting an up to 0.5 percent reduction credit for those residents working outside the City paying another municipal tax. The City provides full municipal services to its residents, including during those times when such residents were forced to work from home due to the restrictions put in place regarding the pandemic. Section 29 of H.B. 197 taxes Ohio citizens at unjust levels and requires some communities to provide services without the funding to do so.

The City respectfully requests that the Court reverse the First District’s decision in *Schaad v. Alder* (2021), Case No. C-2100348, and follow this Court’s precedent, thereby protecting the City’s residents from unfair taxation and more justly allocating tax funds to municipalities which continued to provide services through one of the more trying times in our state’s history.

STATEMENT OF FACTS

For purposes of this brief, the City incorporates the Statement of Facts as set forth by Appellant Josh Shaad.

LAW AND ARGUMENT

This case presents the substantial constitutional question of whether municipalities may be enabled to tax income earned by individuals who neither live in the municipality nor earn taxable income in that municipality. The General Assembly enacted Section 29 of H.B. 197, providing the legal fiction that nonresidents working from home due to the restrictions put in place due to pandemic restrictions were—for municipal tax purposes—still performing their work at their principal place of business in the city in which they usually worked. In response to the dual emergency of disease and economic shutdown, the General Assembly created this legal fiction to pretend that everything was still the same. However, they were decidedly not.

On March 14, 2020, in response to the public health threat posed to Ohio residents by the COVID-19 virus, Ohio Governor Mike DeWine issued Executive Order 2020-01D (“the Emergency Declaration”), which declared a state of emergency, authorized the Ohio Department of Health to issue “guidelines for private businesses regarding appropriate work and travel restrictions, if necessary” and urged “[a]ll citizens . . . to heed the advice of the Department of Health and other emergency officials regarding this public health emergency in order to protect their health and safety.” Executive Order 2020-01D, Declaring a State of Emergency, <https://governor.ohio.gov/media/executive-orders/executive-order-2020-01-d> (accessed Jul. 7, 2022).

On March 22, 2020, in response to the virus’s rapid spread, the State Director of Health issued an Order that required, subject to certain exceptions, “all individuals currently living within the State of Ohio . . . to stay at home or at their place of residence” (“the Stay-at-Home Order”). The Stay-at-Home Order further required that “[a]ll businesses and operations in the State,” except “Essential Business and Operations” as defined in the Order, “cease all activity within the State...”

Ohio Department of Health, Director's Stay At Home Order; <https://coronavirus.ohio.gov/static/publicorders/DirectorsOrderStayAtHome.pdf>(accessed Jul. 7, 2022).

With nearly everyone working from home, taxes should have naturally been assessed in the city where the work was done or where people were living, which at that point were the same place. However, to provide an appearance of everything staying the same, the General Assembly added Section 29 to its omnibus covid response bill H.B. 197, which states:

“[D]uring the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, *any day on which an employee performs personal services at a location, including the employee's home*, 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.*” (H.B. 197 Sec. 29, as enrolled (emphasis added)). This change allowed larger cities to continue with their budgeted expenses.

While larger commuter cities like Cincinnati, Dayton, Cleveland, and Columbus may have seen temporarily decreased daytime population, bedroom communities like the City of Lebanon experienced an increase in people staying home due to their place of work being forcibly closed, or in order to take care of children home from shuttered schools. In the City of Lebanon, many residents work outside of the City limits in other municipalities that collect income taxes. Due to the pandemic and resulting government interventions, the City of Lebanon was responsible for providing full municipal services for these normally commuting residents. Lebanon was required to handle an increase in service calls, road wear, and other expenses. Further, with the increased population staying home from work, the City stepped up its efforts to provide extra avenues to

keep its own businesses open and residents engaged and entertained. The City created five-minute parking spots to facilitate take-out from restaurants that had their dining lobbies closed by the State. A pedestrian plaza was created to allow outdoor gatherings, necessitating street closures and staff hours. All this was done while other larger cities still taxed the residents who neither lived nor worked in their downtowns.

Our residents further had to adjust while being unfairly taxed. Many workers were thrust into a home office situation and paid for it themselves. In addition to no longer having access to office computers, conference rooms, copiers, and the like, Ohioans had to buy those items themselves. Having to pay taxes to a city where they happened to have payroll but were not even working added to this difficulty. In all likelihood, the payroll department was also working outside the customary city limits.

Through a consistent lineage of cases, the Ohio Supreme Court has continuously held that municipalities may only tax individuals who are residents of that municipality or individuals who earn an income within the boundaries of that city. *See McDonnell v. City of Columbus*, 172 Ohio St. 95, 173 N.E.2d 760 (1961); *Thompson v. City of Cincinnati*, 2 Ohio St.2d 292, 208 N.E.2d 747 (1965); *Hillenmeyer v. Cleveland Bd. Of Rev.* 144 Ohio St.3d 165 2015-Ohio-1623 (2015) at ¶ 42; *Willacy v. Cleveland Bd. of Income Tax Rev.*, 165 Ohio St.3d 103, 2021-Ohio-1734.(2021)]at ¶¶ 23-24.

These methods of taxation are proper and fit with Due Process, a requirement for a municipality to exercise the power to tax. *See Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950). In the former, the municipality must provide continuous service to the person's residence. Residents have the power to vote for representatives and influence the tax policy governing the municipality. For the latter, the worker is using the workplace municipality's

services throughout the day. If, for example, a Lebanon resident drives to Procter & Gamble headquarters in Cincinnati for work and needs emergency services, it will be those of Cincinnati and not those of Lebanon that will provide immediate support.

However, taxing an individual for neither working nor living in a city is unjust, as the city is not providing services to that individual and the entities which are providing those services may be being denied fair funding. During the enforced work-from-home period where workers were “deemed” to be working in the municipalities of their office, the actual municipalities in which they lived had to pick up the slack while their citizens were being unfairly taxed.

In the decision by the First District Court of Appeals, the Court makes a distinction between intrastate and interstate taxation in distinguishing *Hillenmeyer* and *Willacy* from the case at hand. *App. Op.* at 9. However, this same situation would apply to Cincinnati taxing a worker “deemed” to be in its City even if he lived and was working from home in Covington, Kentucky. Further, this Court’s decisions in *Angell*, *McDonnell*, and *Thompson* all addressed the application of Due Process to intrastate municipal taxation, which should control in this case.

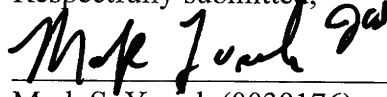
The First District Court of Appeals referred to this action being made in light of an emergency, but a ruling must be made to prevent precedent that any worker anywhere in Ohio can be taxed by one of its cities, even with incredibly minimal or long-past contacts. Remote work will continue to be more prevalent. The citizens of Lebanon have already adjusted their work routines to fit remote work. We have seen the successful launch of a co-working facility in our downtown. Further, the floor plans of our new development, adding nearly 800 homes, comprise home offices with the expectation that many of the new homeowners will work from home. Due Process cannot be overridden, nor should a city be able to lay claim on the income of any resident because of a tenuous or past connection to the city.

Further, taxing the income justly pays for the services actually rendered, rather than those that may have been budgeted but not provided. As such, it serves the public interest to follow the 70 years of precedent and return the limits on municipal taxation to their proper roles.

CONCLUSION

For all the above reasons, the Court should reverse the judgment of the First District Court of Appeals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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