IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

JOHN REID, *et al.*,	)	Case No.: 25CV010760
	)	
Plaintiffs,	)	Judge Julie M. Lynch
	)	
v.	)	Magistrate Jennifer Hunt
	)	
SHERYL MAXFIELD, *et al.*,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS
(Oral Hearing Requested)

I. INTRODUCTION

Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss (the "Opposition") relies heavily on Magistrate Hunt's Decision granting them a preliminary injunction. But, for all the reasons stated in Defendants' Objections to that Decision—and in the Sixth Circuit's recent opinion in a nearly identical case—that decision gets it wrong. Just like Plaintiffs are not entitled to a preliminary injunction, their claims should be dismissed: They failed to exhaust administrative remedies, lack standing, have an adequate remedy at law, and have failed to state a valid claim.

Plaintiffs' arguments in support of Counts III and IV of the Amended Complaint, which are not even addressed in the Magistrate's Decision, are also misplaced. Count III for breach of fiduciary duty should be dismissed because, among other things, it claims that state officials will violate a statute by following its exact terms and that the General Assembly can never amend a statute that has been the subject of a constitutional challenge—utterly novel propositions unsupported by any authority. Count IV also should be dismissed because, Plaintiffs' arguments notwithstanding, the challenged legislation does not violate the single-subject rule.

II. ARGUMENT

A. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT OPTIONAL, AND FAILURE TO EXHAUST DEFEATS EVEN CONSTITUTIONAL CHALLENGES.

The Ohio Supreme Court has been clear—exhaustion of administrative remedies is mandatory. On this issue, other than the Magistrate's Decision, the Opposition relies exclusively on cases that predate the Ohio Supreme Court's decision in *Pivonka v. Corcoran*, 2020-Ohio-3476, and, in any event, those cases do not support Plaintiffs' argument here.

In its most recent decision on this topic, the Ohio Supreme Court reaffirmed that although "administrative agencies cannot adjudicate constitutional questions...a party cannot circumvent the administrative-review process by first raising a constitutional challenge in the common pleas court." *Pivonka*, 2020-Ohio-3476, at ¶ 24. The Ohio Supreme Court was explicit that "the proper procedure for raising a constitutional challenge is to first exhaust all administrative remedies." *Id.* It could not have been clearer in recognizing that when administrative remedies exist, as they do here, plaintiffs must exhaust them before bringing constitutional challenges. There is no dispute that Plaintiffs skipped that step and ran into court before exhausting their administrative remedies.

In their argument, Plaintiffs conflate two concepts: exhausting administrative remedies and raising constitutional challenges before an administrative body. While the cases they cite excuse a party from failing to raise a constitutional challenge before an administrative body where doing so would be futile, they do not excuse a party from first going to the administrative agency when they can obtain relief on their underlying claim there. For example, in *Driscoll v. Austintown Associates*, 42 Ohio St.2d 263, 274 (1975), the Ohio Supreme Court held that the plaintiff was required to exhaust administrative remedies before bringing a constitutional challenge in court. Although that case involved an "as-applied" challenge, **the Ohio Supreme Court did not limit its holding to only that type of challenge**.

Specifically, the Court stated:

> 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. There is nothing in that holding differentiating between as-applied or facial challenges. The "fundamental principle of law" remains the same, particularly in a case like this one. Had Plaintiffs exhausted their remedies, they would have had their unclaimed funds returned to them, which would have negated any need for a decision on the constitutional questions they raise. And simply attempting to bring their case as a class action does not insulate them from the exhaustion requirement, as the court recognized in *San Allen, Inc. v. Buehrer*, one of the cases on which Plaintiffs mistakenly rely. *See San Allen*, 2014-Ohio-2071, ¶ 64 ("A plaintiff cannot escape the exhaustion of remedies requirement by bringing claims as a class action.").

The remainder of the cases Plaintiffs cite do not excuse their failure to exhaust administrative remedies. They simply stand for the proposition that a plaintiff is not always required to raise a particular type of challenge before an administrative agency where doing so would be futile (*i.e.*, because the administrative agency cannot decide a constitutional question). Those cases do not say that plaintiffs can skip the administrative procedure and run straight into court simply because they are asserting a constitutional challenge, only that they are not always required to make the constitutional challenge itself before the agency. *See, e.g.*, *Jones v. Village of Chagrin Falls*, 77 Ohio St.3d 456, 461 (1997) (differentiating between whether failure to exhaust gives rise to a jurisdictional defect or just raises an affirmative defense); *Derakhshan v. State Med. Bd. of Ohio*, 2007-Ohio-5802, ¶ 24 ("While many courts describe the exhaustion doctrine as a

jurisdictional concept, the Supreme Court of Ohio and this court have clarified that a party's failure to exhaust available administrative remedies is not a jurisdictional defect.").

Try as they might to avoid *Pivonka*, that case recognizes an unavoidable obstacle for Plaintiffs' here. Plaintiffs did not plead, and cannot prove, that they were unable to reclaim their funds when working through the administrative process. Because Plaintiffs are not permitted to proceed in court unless and until they exhaust their administrative remedies, their claims fail.

B. Plaintiffs' Actual Notice Defeats Their Due Process Claim Both on the Merits and for Standing Reasons.

Plaintiffs had **actual notice** before filing suit that they have funds in the Unclaimed Funds Trust Fund ("UFTF"). *See* Am. Compl., ¶ 8. They fail even to respond to the argument that their actual notice of funds within the UFTF defeats their due process claim. In *Bleick v. Maxfield*, on facts indistinguishable from those presented here, the Sixth Circuit held that the plaintiffs' actual notice defeated their due process claims as that actual notice afforded them the opportunity to file claims with the Division of Unclaimed Funds (the "Division"). *See Bleick v. Maxfield*, — F.4th — , 2026 WL 673198, at *2 (6th Cir. Mar. 10, 2026) (*Keene Grp., Inc. v. City of Cincinnati, Ohio*, 998 F.3d 306, 312 (6th Cir. 2021)).

That actual notice—and the decision to sit on their rights instead of claim their funds—also precludes a finding of standing, given that standing cannot be manufactured. *See State ex rel. Martens v. Findlay Municipal Ct.*, 2024-Ohio-5667, ¶¶ 19-20. Standing also is lacking because Plaintiffs cannot point to an imminent concrete injury they are in danger of suffering. *See Jessica v. Ohio Dep't of Fam. & Job Servs.*, 2025-Ohio-2604, ¶ 12 (10th Dist.) (citing *Ohioans for Concealed Carry, Inc. v. Columbus*, 2020-Ohio-6724, ¶ 12). In short, Plaintiffs fail to plead how anything in H.B. 96 prevents them from claiming their funds. Even once these funds are deemed abandoned and escheat, Plaintiffs can still file a claim to regain property rights at any time before

January 1, 2036. R.C. 169.08(I)(3)(b). This timeline, both to file a claim before abandonment and even post abandonment, forecloses any argument that Plaintiffs face an imminent injury.

Plaintiffs have not demonstrated a cognizable injury arising out of their due process claim given their actual notice, nor can they. Their admitted knowledge that they had actual notice of funds within the UFTF before filing suit is fatal to their due process claim.

C. PLAINTIFFS' TAKING AND DUE PROCESS CLAIMS SUBSTANTIVELY FAIL UNDER BOTH *STANDARD OIL* AND *TEXACO*.

Despite Plaintiffs' best efforts to distract the Court from precedent from the United States Supreme Court that is directly on point, Plaintiffs fail to provide a true distinction between this case and the Supreme Court's *Standard Oil* and *Texaco* cases. *See Texaco, Inc. v. Short*, 454 U.S. 516, 518-19 (1982); *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 430 (1951). In those cases, the Court upheld true escheat statutes as constitutional, and also confirmed that notice by publication (*Standard Oil*) and notice by simply passing the statute (*Texaco*) satisfies due process. Even more so, in *Texaco*, the statute's provision for a grace period to recover property rights, standing alone, satisfied due process. *Texaco*, 454 U.S. at 532.

Just as in those cases, the challenged provisions in H.B. 96 constitute a true escheat statute. It is indisputable that before the property enters the State's custody—both before and after H.B. 96 was enacted—the statute requires that notice be given to the owner. R.C. 169.03. After this, the Division itself issues notice. R.C. 169.06. The Division also provides ongoing notice by maintaining a website where property owners can search for unclaimed funds at any time, free of charge. Property then escheats only after ten years in the UFTF. Even then, claimants still have a grace period until 2036 (another 10 years from now) to reclaim property. R.C. 169.08(I)(3)(b).

Plaintiffs continue to argue that by moving from a custodial statute to an escheat statute, a taking occurs. Opp. at 8. That line of reasoning is not only illogical, as it would mean a state can

never amend its statutes to move from a custodial framework to an escheat framework, but it is wrong for the reasons set forth in *Standard Oil* and *Texaco*.

In reality, there is nothing novel about Ohio's amended Unclaimed Funds law from either a taking or due process perspective. That Plaintiffs would prefer a different law is something they can address through the legislative process, not through litigation.

D. EVEN IF THIS COURT FINDS THAT A TAKING OCCURRED, THE TAKING IS FOR A PUBLIC USE.

Plaintiffs last argument on the taking issue is that the use of the funds will not be used for a public purpose, as required for a taking to be constitutional. *See* Opp. at 9-10. While Defendants do not concede that the H.B. 96 amendments to R.C. 169 result in a taking, the escheated funds will, indeed, be used for a public purpose.[1]

Contrary to Plaintiffs' arguments, Ohio courts recognize that takings for sports stadiums is consistent with the "public use" requirement. In *Cincinnati Enter. Assoc., Ltd. v. Hamilton Cnty. Bd. of Comm'rs*, 141 Ohio App.3d 803 (1st Dist. 2001), the First District examined whether Hamilton County was required to condemn certain property rights associated with the County's public stadiums for the Cincinnati Bengals and the Cincinnati Reds. *Id.* at 808-09, 821-22. The court held that the County has a legal duty to appropriate "property interests taken for the public good" and "property interests taken for the construction of public structures." *Id.* at 821-22. Because the stadium complex served the "public good," the court held "that the commissioners [had] a clear legal duty to appropriate" the property interests. *Id.*

[1] The distinction here is that if the funds are abandoned (and they are), then the legislation is not a taking, and the State would not be required to provide compensation to the prior owners of the funds. If, however, the funds are not deemed abandoned, then the question is whether they are being used for a public purpose. If they are being used for a public purpose (and they are), then the legislation is constitutional, but the owners would be entitled to compensation. If the funds are a taking for a private purpose, then the legislation would be unconstitutional. Ohio Constitution, Article I, Section 19 ("[W]here 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.").

Likewise, the Fifth District recently held that construction of a sports, entertainment, or convention facility, including a combination thereof, was a public use. *Muskingum Cnty. Convention Facilities Auth. v. Barnes Advert. Corp.*, 2025-Ohio-1864, 2025 WL 1483981 (5th Dist.). While one goal of the project was to increase public revenue, the Court of Appeals found that the ultimate goal was to provide a space to host public events, which would ultimately generate a profit. The court held that the taking was for a public use because the use, though in part motivated by generating revenue and promoting tourism, was going to serve the public in ways that were not solely related to increasing public revenue. *Id.* at ¶ 25.

Just as in *Muskingum* and *Hamilton County*, the project at issue here—a transformational major sports facility mixed-use project—as defined in R.C. 123.28(Q), and funded in part, by the escheated UFTF funds, will serve the public by offering a venue for home games of an Ohio professional sports franchise; publicly available amenities like conference centers, meeting spaces, and concert venues; and retail, food, restaurant, and beverage facilities, among other things. *See* R.C. 123.28(Q). That alone satisfies the "public use" requirement, even if the Court were to find that the amended statute constitutes a taking.

Plaintiffs are simply mistaken in their argument that the statute creates an unconstitutional taking of private funds for a private purpose.

E. Plaintiffs' Adequate Remedy at Law Bars Their Equitable Claims.

In their Opposition, Plaintiffs fail to cite a single case supporting the proposition that their "post-taking remedies are insufficient" to redress the harm they allege. Opp. at 16-17. Instead, they baldly claim that money damages cannot redress their injury.

Plaintiffs are mistaken. For example, they cite *Irving J. Franklin Realty, Inc. v. City of E. Cleveland*, 2023-Ohio-4419 (8th Dist.). There, after concluding that the City of East Cleveland had failed to give proper pre-deprivation notice in a condemnation action, the Eighth District

affirmed the trial court's award of ***damages***. *Id.* at ¶¶ 4, 19-20. In other words, *Irving J. Franklin* did not involve claims for declaratory or equitable relief, and it reaffirms that a failure to afford pre-deprivation notice can be redressed by money damages.

Both of Plaintiffs' equitable claims—for injunctive and mandamus relief—require Plaintiffs to lack an adequate remedy at law. *Fodor v. First Nat'l Supermarkets, Inc.*, 63 Ohio St.3d 489, 491 (1992) (citations omitted); R.C. 2731.05. Plaintiffs here allege only that they are entitled to recovery of the ***funds*** they have in the UFTF. Am. Compl. ¶ 8. They can reclaim those ***funds*** by following the administrative process, as explained above. And, if eventually permitted to proceed in court, the Court can award their ***funds*** in the form of damages in this action if they otherwise prevail. Either way, Plaintiffs "have an adequate remedy at law such as money damages." *Triad Hunter, LLC v. Eagle Natrium, LLC*, 2024-Ohio-5188, ¶ 125 (7th Dist.) (citing *Martin v. Lake Mohawk Property Owner's Ass'n*, 2005-Ohio-7062, ¶ 48 (7th Dist.)).

The Sixth Circuit reached exactly that conclusion in *Bleick*, 2026 WL 673198. There, addressing challenges virtually identical to Plaintiffs' challenge here, the court held that "[a]t issue in this case is only money." *Id.* at *1. The effect of the escheat provision in the challenged legislation is to transfer ownership of "monies" to the state itself. *Id.* at *2 (citing R.C. 169.08(I)(3)(a)). From there, Plaintiffs have ten years to claim their funds from the State. *Id.* (citing R.C. 169.08(I)(3)(b)). And, just like Plaintiffs here, the plaintiffs in *Bleick* "barely attempted to show that they cannot recover their monies by that means[.]" *Id.*

There is no rule that constitutional violations cannot be remedied by money damages. That is particularly true here, where the claims themselves are only about money. Therefore, Plaintiffs' claims for equitable relief, including for an injunction and mandamus, must be dismissed.

F. Defendants Have No Fiduciary Obligations to Plaintiffs With Respect to Escheated Funds.

While Plaintiffs continue to claim that, under *Sogg*, the State holds funds in the UFTF for the benefit of the owners, they cite no authority for the proposition that breach of fiduciary duty claims are viable against state actors. Opp. at 11-13. Plaintiffs are wrong for two independent reasons.

First, Ohio courts have found fiduciary duties to exist for state actors only "in the context of public officials who engaged in some sort of financial misconduct, such as using their public office for private gain or misappropriating funds in contravention of express statutory duties." *Id.* (quoting *State ex rel. Cook v. Seneca Cty. Bd. of Commrs.*, 2008-Ohio-736, ¶ 32). Plaintiffs do not allege that Defendants are using their public offices for private gain or that they are misappropriating funds in contravention of statutory duties. Instead, Plaintiffs allege Defendants will breach some fiduciary duty of Chapter 169 by *following* Chapter 169. Am. Compl. ¶¶ 127-130. That position is untenable. Defendants can find no Ohio law—and Plaintiffs have cited none—where a court has found that a state actor violated a statute by following its very terms.

Second, even assuming Defendants owe Plaintiffs a fiduciary duty and that state actors can be sued for a breach, any duty would be extinguished upon escheat. All property rights, legal title to, and ownership of unclaimed funds and interest "vest solely in the state on the date the unclaimed funds and interest are deemed abandoned and escheat to the state." R.C. 169.08(I)(3)(a). It is this "alteration of property rights along with the eventual confiscation of these private funds for a private use" that makes up Plaintiffs' breach of fiduciary duty claim. Am. Compl. ¶ 130. But once the funds have been abandoned and escheat, Plaintiffs have no rights whatsoever to the monies held by the State, and Defendants have no duty to Plaintiffs, either.

Plaintiffs' reliance on *Sogg* is, again, misplaced. Under Plaintiffs' reading of *Sogg*, the General Assembly would never be permitted to amend any statute that has been subject to a constitutional challenge. That plainly is not the law. The Ohio Supreme Court ruled in *Sogg* based on the language in the statute before it. The statute has now been amended; *Sogg* is not controlling.

Accordingly, Plaintiffs' Count III for breach of fiduciary duty should be dismissed.

G. THE AMENDED STATUTE DOES NOT VIOLATE THE SINGLE-SUBJECT RULE.

While Plaintiffs call the appropriation bill that is H.B. 96 an act of "logrolling," this could not be further from the truth. Opp. at 13. Appropriations bills like H.B. 96 "necessarily address wide-ranging topics and bring unique challenges for judicial review." *State ex rel. Ohio Civ. Serv. Emps. Ass'n v. State*, 2016-Ohio-478, ¶ 18. Still, when viewing the purpose of an appropriations bill—"balancing state expenditures against state revenues to ensure continued operation of state programs[]"—H.B. 96 fits within this purpose. *Id.* at ¶ 23. Given the broad topic, the Ohio Supreme Court has rejected one-subject challenges to appropriations bills where the provisions "relate[] to funding the operations of programs, agencies, and matters described elsewhere in the bill." *Id.* (quoting *ComTech Sys., Inc. v. Limbach,* 59 Ohio St.3d 96, 99 (1991)).

Plaintiffs rely on *Plain Local School District Board of Education v. DeWine*, 486 F. Supp. 3d 1173, 1199 (S.D. Ohio 2020), to argue that H.B. 96 lacked any discernable, practical, and rational relationship to the State's revenue and funding. Opp. at 14. Not so. In an appropriation bill (such as H.B. 96), the State's revenue and funding is the core issue. Further, Plaintiffs gripe with two provisions (one, an appropriation; the other, the revenue provision associated with the appropriation), both of which are clearly discernible, practical, and rational as they relate to the State's budget. On its face, the General Assembly was not attempting to include a hidden provision such that it would pass simply as it was related to the appropriations bill (i.e. "logrolling"); instead, H.B. 96 involves the State's budget including appropriations and revenue sources. These two

sources together fall squarely within the overall subject of state expenditures and revenues. Plaintiffs' single-subject challenge fails and Count IV should be dismissed. *See State ex rel. Ohio Civ. Serv. Emps. Ass'n v. State*, 2016-Ohio-478, ¶¶ 33-34.

II. TREASURER SPRAGUE AND EXECUTIVE DIRECTOR BLEDSOE ARE NOT PROPER DEFENDANTS.

Plaintiffs argue that Defendants Sprague and Bledsoe are proper defendants simply because they have "authority to administer, implement, or give effect to the statutory scheme," yet Plaintiffs provide no citation or basis for this assertion. Opp. at 17. While Plaintiffs cite to *Ex parte Young*, 209 U.S. 123 (1908), as a basis for ***naming*** both Defendants Sprague and Bledsoe, Plaintiffs fail explain how those Defendants have sufficient involvement under H.B. 96 to make any claims against them viable.

While Plaintiffs (incorrectly) allege that Treasurer Sprague can "receive, control, and redirect funds from the challenged amendments," they noticeably fail to cite to any provision within H.B. 96 supporting that contention. They additionally fail to acknowledge that the statute's legal framework relative to the Treasurer remains unchanged by H.B. 96. Both before and after H.B. 96, the Treasurer's role in the UFTF is purely ministerial. The Treasurer has no authority to move money out of the UFTF absent direction by the Department of Commerce, to authorize disbursement of UFTF funds, or to control the appropriation or allocation of escheated funds. Nor does the Treasurer play any role in the escheat process; or the process of evaluating claims for funds in the UFTF. There is just nothing in the statute that would make Treasurer Sprague a proper Defendant here.

Plaintiffs also fail to provide a basis for keeping Executive Director Bledsoe in this case. They erroneously allege that Executive Director Bledsoe "is responsible for administering the grant fund into which the confiscated property will be deposited and expended." Opp. at 18. In

reality, nothing in the newly enacted R.C. 123.282, or in H.B. 96 Section 229.40 assigns the Ohio Facilities Construction Commission ("OFCC")—or its Executive Director—any authority to administer, manage, disburse, or oversee escheated funds. Perhaps Plaintiffs based their claims on a prior draft of the legislation, but their claims against Executive Director Bledsoe are not based on the actual text of the legislation as enacted.

Given that Plaintiffs fail to allege any act or omission specific to Defendants Sprague or Bledsoe, there is no cognizable legal claim that can be brought against them. For these reasons, neither one is a proper party to this lawsuit.

III. CONCLUSION

For the reasons stated above and in Defendants' Motion to Dismiss, Defendants respectfully ask the Court to dismiss Plaintiffs' Amended Complaint in its entirety and with prejudice under Civ.R. 12(B)(1) and Civ.R. 12(B)(6).

Respectfully submitted,

/s/ Aneca E. Lasley

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's e-filing system on this 6th day of April, 2026 upon all counsel of record.

/s/ Aneca E. Lasley
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