

IN THE SUPREME COURT OF OHIO

CITY OF CINCINNATI <i>ex rel.</i> MARK MILLER,	:	Case No. 2024-1687
	:	
Relator-Appellant,	:	On Appeal from the
	:	Hamilton County Court of Appeals,
	:	First Appellate District
v.	:	
	:	Court of Appeals
CITY OF CINCINNATI, <i>ET AL.</i> ,	:	Case No. C230683
	:	
Respondents-Appellees.	:	
	:	

AMICUS BRIEF OF OHIO MUNICIPAL LEAGUE IN SUPPORT OF
RESPONDENTS-APPELLEES

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I. INTRODUCTION

Relator-Appellant Mark Miller is asking this Court to overturn well-established principles of taxpayer standing under R.C. 733.59. Under Miller's interpretation, any taxpayer who disagrees with a local government's action or inaction has standing to sue irrespective of personal stake or public benefit. Adopting his interpretation as law would impact every city and village—statutory and charter—in the state. This position is untenable under existing law and unsound as to public policy.

Local governments cannot operate if they are subject to unfettered judicial intervention. As this Court recognized, "allowing constant judicial intervention into government affairs for matters that do not involve a clear public right would [] not benefit the public." *State ex rel. Teamsters Loc. Union 436 v. Cuyahoga Cty. Bd. of Commrs.*, 2012-Ohio-1861, ¶ 17. That's not to say taxpayers—and others—are not entitled to challenge their local governments; they are. The Ohio Constitution, Ohio Revised Code, and Ohio Administrative Code permit citizens to referendum legislation, initiate legislation of their own, challenge administrative actions, and vote on their elected officials.

But Miller's request here is a step too far. He is asking this Court to overturn decades of precedent to allow taxpayer suits to proceed with no vindication of a public right. The plain language of the statutes does not support this interpretation; the case law does not support this interpretation; and public policy does not support this interpretation.

II. STATEMENT OF INTEREST OF AMICUS CURIAE

The Ohio Municipal League (“OML”) was incorporated as an Ohio nonprofit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal governments. OML represents 730 of Ohio’s 931 cities and villages. OML has six affiliated organizations: (1) the Ohio Municipal Attorneys Association; (2) the Municipal Finance Officers Association; (3) the Ohio Mayors Association; (4) the Ohio Association of Public Safety Directors; (5) the Ohio City/County Management Association; (6) and the Ohio Municipal Clerks Association. On a national basis, OML is affiliated with the National League of Cities, the International Municipal Lawyers Association, the U.S. Conference of Mayors, and the International City/County Managers Association.

OML represents the collective interest of Ohio cities and villages before the Ohio General Assembly and the state elected and administrative offices. In 1984, OML established a Legal Advocacy Program funded by voluntary contributions of the members. This program allows OML to serve as the voice of cities and villages before state appellate courts, the Supreme Court of Ohio, and the United States Courts of Appeals, and Supreme Court by filing briefs amicus curiae on cases of special concern to municipal governments. OML has been accredited by the Supreme Court of Ohio as a sponsor of both Continuing Legal Education Programs for attorneys and the required Mayors Court training for Mayors hearing all types of cases.

The result of this case will impact every city and village in Ohio whether they are statutory or charter. If the Court adopts Miller's interpretation of taxpayer standing under R.C. 733.59, local governments will be overwhelmed with legal challenges. Run-of-the-mill local government decisions will turn into years of litigation, inevitably impacting basic services, government resources, and courts' time and resources. This carte blanche ability to sue local governments over any disagreement with their decision making has never been the function of taxpayer lawsuits. This Court has never interpreted the taxpayer-lawsuit statutes in that way, and it should not start now.

III. STATEMENT OF THE CASE AND FACTS

OML adopts, in its entirety, and incorporates by reference, the statement of the case and facts contained within the Brief of Respondents-Appellees, the City of Cincinnati.

IV. ARGUMENT IN OPPOSITION OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Under the municipal statutory taxpayer-lawsuit provisions, a taxpayer may file an action on "behalf of a municipal corporation," R.C. 733.59, if the government fails to pursue a lawsuit after a written request from the taxpayer. In such cases, the standing requirement is satisfied because the municipal corporation is the actual party in interest and the General Assembly has explicitly given the taxpayer authority to sue on the government's behalf.

Over a century ago, this Court determined that "taxpayers cannot contest official acts 'merely upon the ground that they are unauthorized and invalid.'" *State ex rel. Teamsters Local Union No. 436 v. Bd. of Cty. Comm'rs*, 2012-Ohio-1861, ¶ 16, quoting *Pierce*

v. Hagans, 79 Ohio St. 9, 22 (1908). Rather, this Court interpreted the taxpayer-lawsuit provision here to include a public benefit requirement. *State ex rel. Nimon v. Village of Springdale*, 6 Ohio St.2d 1 (1966), paragraph two of the syllabus. A taxpayer under R.C. 733.59 has always been one who “volunteers to enforce a right of action on behalf of and for the benefit of the public.” (Emphasis added.) *Id.* This Court has reaffirmed this public benefit requirement repeatedly because under taxpayer-lawsuit provisions, “the taxpayer’s aim must be to enforce a public right, regardless of any personal or private motive or advantage.” *State ex rel. Caspar v. City of Dayton*, 53 Ohio St. 3d 16, 20 (1990); *State ex rel. Fisher v. Cleveland*, 2006-Ohio-1827, ¶ 12; *Ohioans for Concealed Carry v. City of Columbus*, 2019-Ohio-3105, ¶ 19 (10th Dist.), citing *State ex rel. White v. Cleveland*, 34 Ohio St. 2d 37, 40 (1973).

Miller now seeks to overturn this well-established precedent at the expense of local governments across the state. But his arguments contravene established law and disregard sound public policy.

First, Miller concedes that this matter is one of statutory interpretation. *Appellant’s Merit Brief*, pp. 6-10. But as shown above, this Court has already interpreted the taxpayer-lawsuit provisions, including R.C. 733.59, to require a taxpayer to show a public benefit to have standing. So Miller is asking this Court to ignore its precedent and ignore stare decisis. The Court should not acquiesce. “Stare decisis is a cornerstone of our legal system.” *State v. Williams*, 2024-Ohio-1433, ¶ 17, quoting *Webster v. Reproductive Health*

Servs., 492 U.S. 490, 518 (1989). Stare decisis “compels a court to recognize and follow an established legal decision in subsequent cases in which the same question of law is at issue[,]” and is even “more sacrosanct” when statutory interpretation is involved. *Id.*, quoting *State v. Henderson*, 2020-Ohio-4784, ¶ 28 and *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St. 3d 1, 6 (1989).

R.C. 733.59 has always required the taxpayer to establish the public right or benefit of the action to establish standing. If the legislature disagreed with this Court’s interpretation, it could have amended the statute; but it didn’t. *See Williams* at ¶ 17; *see also New Riegel Loc. Sch. Dist. Bd. of Educ. v. Buehrer Grp. Architecture & Eng’g, Inc.*, 2019-Ohio-2851, ¶ 19. For this reason alone, the public benefit requirement for taxpayer standing under R.C. 733.59 must remain intact.

Second, adopting Miller’s interpretation of R.C. 733.59 would open the flood gates for plaintiffs to file suit against local governments simply because the taxpayer disagrees with a local decision. Miller’s interpretation—that because the taxpayer suit is instituted on behalf of the municipality, the taxpayer automatically has standing—virtually eliminates any standing requirement when challenging a local government. That cannot be the case. Under that theory, any taxpayer at any time can challenge any local government decision irrespective of personal stake or public benefit. That position not only leads to an absurd result—the abolition of any standing requirement when suing a local government—but it renders other legal remedies superfluous.

There are several ways that taxpayers and individuals can hold their local governments accountable under Ohio law. Individuals may petition to referendum local legislation (Ohio Const., art. II, § 1f); individuals may initiate local legislation of their own (*Id.*); they may administratively appeal from any final order, adjudication, or decision where their rights are impacted (R.C. Chapter 2506); they may seek declaratory judgments on the legality of constitutional provisions, statutes, rules, and ordinances, (R.C. 2721.03); and of course, they have the power to vote.

Removing the longstanding public interest requirement for taxpayer standing under R.C. 733.59 would allow individuals to circumvent these other specific legal remedies. Local governments will be forced to expend significant resources defending taxpayer suits anytime anyone disagrees with any local decision. That untenable result is precisely what the public benefit requirement for taxpayer-lawsuit standing was meant to prevent.

Proposition of Law No. 2: To the extent the vindication of the public interest or providing a public benefit is required before a taxpayer has standing to proceed under the municipal statutory taxpayer-lawsuit provisions, when a city council has allegedly assumed and exercised a power not granted to it under the city charter, a taxpayer has standing to challenge such action under the municipal statutory taxpayer-lawsuit provisions as the effort to restrain such abuse of corporate power actions by the city council vindicates the public interest and/or provides a public benefit.

Miller also seeks to overturn decades of precedent by arguing that purportedly unauthorized actions by local government constitute an abuse of corporate power under

the taxpayer-lawsuit provisions. This position, too, disregards established law and undermines sound policy.

Not every alleged abuse of corporate power is of public interest. The abuse of corporate powers under R.C. 733.56 is broadly defined as “the unlawful exercise of powers possessed by the corporation, as well as the assumption of power not conferred.” *State ex rel. Fisher v. Cleveland*, 2006-Ohio-1827, ¶ 19, citing *Porter v. City of Oberlin*, 1 Ohio St.2d 143, 146 (1965), quoting *Elyria Gas & Water Co. v. City of Elyria*, 57 Ohio St. 374 (1898), paragraph six of the syllabus. But “[t]axpayers cannot contest official acts ‘merely upon the ground that they are unauthorized and invalid...[w]ithout more than the bare claim’” that a local government “‘has failed to comply’” with its established powers. *Ohioans for Concealed Carry v. City of Columbus*, 2019-Ohio-3105, ¶ 28 (10th Dist.), quoting *State ex rel. Teamsters Loc. Union 436 v. Cuyahoga Cty. Bd. of Commrs.*, 2012-Ohio-1861, ¶ 16. Thus, alleging only an abuse of corporate power is not sufficient for standing under R.C. 733.59 – the taxpayer must also show that the abuse of corporate power is within the public interest. *Id.* at ¶ 27 (holding that the taxpayer had standing under R.C. 733.59 because the alleged abuse of corporate power implicated the public’s interest as voters). And similarly, where asserting a public benefit or public protection is a mere pretext, the taxpayer will not have standing. *Ohioans for Concealed Carry* at ¶ 26, citing *Teamsters* at ¶ 12.

Accepting the Appellant’s second proposition of law would likewise open the floodgates of litigation against municipal governments, impeding their ability to efficiently function and ultimately working against the public interest. The abuse of corporate powers is so broadly defined that if, as Miller proposes, every corporate abuse of power was within the public interest, individuals could file lawsuits for mere ideological opposition to municipal actions. But “[i]deological opposition to a program or legislative enactment is not enough’ to establish standing in a statutory taxpayer action” and violates “traditional principles of standing.” *Id.* at ¶ 24, quoting *State ex rel. Walgate v. Kasich*, 2016-Ohio-1176, ¶ 18, quoting *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 1.

Miller and his supporting *amicus curiae* argue that “all political power is inherent in the people.” Ohio Const., art. II, § 1. We agree. The people of Ohio are empowered to hold referendums, initiate legislation and government action, file administrative appeals, seek declaratory judgments, and vote to resolve political disagreements and express ideological opposition to municipal actions. They are not empowered, however, to file lawsuits against municipal governments over ideological disagreements. Nor should they be—local governments must be permitted to function without constantly defending taxpayer suits.

V. CONCLUSION

For the reasons above, the Court should reject Miller's propositions of law and uphold the well-established and well-reasoned taxpayer-lawsuit standing requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing *Brief of Amicus Curiae the Ohio Municipal League*, has been sent via ECF this 29th day of July, 2025, upon the following counsel:

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