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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

Dr. Trudy Bond,	)	Case No. 11 CV 004711
Mr. Michael Reese,	)	
Rev. Colin Bossen,	)	Judge L. Beatty
Dr. Josephine Setzler,	)	
Petitioners	)	<b>RELATORS' MEMORANDUM IN SUPPORT OF OBJECTION TO MAGISTRATE'S DECISION</b>
v.	)	
Ohio State Board of Psychology,	)	Terry J. Lodge (OSC # 0029271)
Respondent.	)	316 N. Michigan St., Ste. 520
	)	Toledo, OH 43604-5627
	)	(419) 255-7552
	)	Fax (419) 255-8582
	)	tjlodge50@yahoo.com
	)	Counsel for Relators

This case involves credible allegations of torture by an Ohio psychologist. Yet, the assigned magistrate did not even mention the word torture in his decision. The decision did not acknowledge the grave implications of the allegations made to the Ohio Board of Psychology. Nor did it grasp the need for court oversight to maintain the integrity and viability of the Ohio enforcement mechanism. State licensure and disciplining of psychologists is a key part of the federal scheme regulating military psychologists. The duty here falls to Ohio. The Board's refusal to act in accordance with this duty necessitates judicial action to compel its performance, in respect of the General Assembly's policy to protect the people of Ohio.

Relators object to the magistrate's decisions as to all three motions, and request that the Court: (1) convene an oral argument on all issues, (2) grant Relators the requested discovery, and (3) postpone ruling on the motion to dismiss until it can hear arguments and review discovery. Alternatively, Relators request that the Court reverse the magistrate's decision by denying Respondent's motion to dismiss and proceeding with discovery and a hearing on the merits.

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### A. STANDARD OF REVIEW

The magistrate erred in finding that Relators lack standing and in dismissing this *mandamus* petition for lack of subject matter jurisdiction (which the Court has, pursuant to O.R.C. Chapter 2731). He incorrectly reviewed – and dismissed – Relators’ standing claims as involving subject matter jurisdiction governed by Civ.R.12(B)(1). But a motion to dismiss for lack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court. *State ex rel. Jones v. Suster* (1998), 84 Ohio St. 3d 70, 77; *State ex rel. Smith v. Smith* (1996), 75 Ohio St. 3d 418, 420; *State ex rel. LTV Steel Co. v. Gwin*(1992), 64 Ohio St. 3d 245, 251. “These issues are properly raised by a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted.” *Brown v. Columbus City Schs. Bd. of Educ.*, 2009-Ohio-3230 (Franklin App. June 30, 2009) (citing *Suster* and *Washington Mut. Bank v. Beatley*, 10th Dist. No. 06AP-1189, 2008 Ohio 1679, p. 10).

In *Bourke v. Carnahan* (Franklin App. 2005), 163 Ohio App.3d 818, 824, 2005 Ohio 5422, the Court of Appeals, in discussing elements of standing, reasoned that:

At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for *on a motion to dismiss the court will presume that general allegations embrace those specific facts that are necessary to support a claim.*

(emphasis supplied). Indeed, the factual allegations of the complaint and all reasonable inferences therefrom must be taken as true when addressing a motion to dismiss pursuant to Civ.R. 12(B)(6). *Vail v. The Plain Dealer Publishing Co.* (1995), 72 Ohio St.3d 279, 280. “A complaint in *mandamus* states a claim if it alleges the existence of the legal duty and the want of an adequate remedy at law with sufficient particularity so that the respondent is given reasonable notice of the claim asserted.” *State ex rel. Hanson v. Guernsey Cty.Bd. of Comm’rs.* (1992), 65

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Ohio St.3d 545, 548 (citing *Jenkins v. McKeithen* (1969), 395 U.S. 411, 421). By applying the wrong standard for review of the Complaint, and failing to accept as true the averments of the complaint and their inferences, the magistrate improperly denied standing to the Relators and incorrectly found they had stated no claim in *mandamus*.

## **B. OBJECTIONS TO INSUFFICIENT FINDINGS OF FACT**

### **1. Errors Regarding Harm to Relators and the Public**

The magistrate ignored reasonable inferences arising from the Complaint that should have been accorded deference. In particular, the Board's dismissal of the complaint against Dr. James, without explanation and in disregard of substantiated allegations of serious misconduct, undermines Board license credibility and, by implication, the integrity of licensed psychologists such as Dr. Trudy Bond, who is a practitioner. Compl. at ¶¶ 12, 65. The magistrate failed to recognize that the public might reasonably misinterpret Board inaction to mean that Dr. James's involvement in torture and misuse of his healing art violates neither laws nor rules of the profession, and does not render a psychologist unfit to practice in Ohio. This view compromises the Board's legitimacy to monitor and enforce. It also impairs the ability of potential and actual patients and clients to trust that Ohio psychology licensure is a credible certification that the professional will care for vulnerable people, not exploit them. The regulatory failure to undertake a *bona fide* investigation or hold a hearing on Dr. James's misconduct thus erodes Dr. Bond's license and harms her ability to earn patients' trust.<sup>1</sup>

The assigned magistrate similarly ignored facts and inferences of distinct injury as alleged by the other Relators. See Compl. at ¶¶ 66-68. Dr. Josephine Setzler works as an advocate for her brother and others who suffer from mental illness, including inmates in

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<sup>1</sup>The magistrate also misunderstood that not only do Ohio regulatory laws and rules grant Dr. Bond authority to file her Board complaint, but legally oblige her to do so, since as a fellow professional, she is particularly well-equipped to recognize misconduct.

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correctional institutions. She reasonably fears that Ohio correctional authorities may use the Board's inaction in the James case to pressure psychologists to disregard their ethical obligations when treating prisoners and vulnerable patients. Rev. Colin Bossen ministers a congregation and refers vulnerable congregants in need of mental health treatment to Ohio psychologists. The Board's apparent indifference to protecting Ohioans from psychologists who use their professional skills and authority to exploit those in their care significantly impairs Rev. Bossen's ability to confidently refer those in need of psychological help. Michael Reese, a disabled veteran, receives regular treatment at Ohio Veteran Affairs (VA) hospitals. As such, he receives care from active-duty and retired military health professionals. If military abuses of psychological tools are allowed to trump Ohio law, then Mr. Reese cannot rely on a license to indicate that a psychologist is practicing ethically and subjected to meaningful monitoring.

The magistrate reduced this case (Decision p. 7) to "a complaint seeking disciplinary action against the license of a single psychologist, Dr. James," and characterized the Board's decision as one which "does not affect the citizenry at large . . . is not of great importance and interest to the general public, and the alleged public injury is not serious." This trivializes the historically momentous issue of torture and the imperative for accountability for those who commit it, particularly when they are licensed psychologists charged with healing rather than harming. The U.S. military expressly relies on state licensing boards to oversee the quality of their licensees' services. The politically sensitive nature of this case cannot be a reason for a magistrate to fail to draw reasonable inferences in Relators' favor. This Court should defer to the complaint's allegations and require the Ohio Board of Psychology to fairly discharge its duties.

## **2. Errors Regarding Allegations and Supporting Evidence in Relators' Complaint**

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The magistrate erred in failing to accept as true that the Board Complaint presented evidence of conduct that, on its face, violated Ohio laws and rules prohibiting psychologists from entering into multiple relationships that compromise judgment and objectivity and lead to the exploitation of people with whom they work. Compl. at ¶46. He overlooked some of the allegations that the evidence included statements made by Dr. James himself in his own book, see *id.* at ¶30, 44, as well as allegations that Dr. James had engaged in misrepresentation. See *id.* at ¶45 (citing Bd. Compl. at ¶¶52-53, 94-110). And the magistrate minimized the gravity of the expert opinion provided by Dr. Bryant Welch, who concluded that the allegations, if true, constituted the most serious and far-reaching ethical breaches he has ever encountered in 35 years as a psychologist and expert in psychological ethics. See *id.* at ¶50.

### **3. Errors Regarding the Board's Response to Relators' Complaint**

The magistrate failed to accept as true and ascribe weight to the allegation, not disputed by the Board, that Board investigators refused to explain why they would not proceed with the complaint. See *id.* at ¶¶55-58. While he noted the September 30, 2010 meeting between Relators and the Board, the magistrate failed to mention that the meeting had been proposed by Relators as an opportunity to answer questions from the Board, but that the investigators repeatedly responded that they had no questions for Relators. See *id.* at ¶53. The Relators repeatedly told the Board that they were available to provide additional information, including witnesses, see *id.* at ¶5, but the Board never took up this offer, nor did investigators, to Relators' knowledge, contact the witnesses Relators suggested. See *id.* at ¶53. The cursory January 30, 2011 letter reflects the apparent lack of any meaningful investigation.

### **4. Errors Regarding Board Duties**

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The magistrate failed to mention and adequately consider, in the Factual Background and Conclusions of Law sections of his decision, authority that explicitly articulates the Board's duties to the public, including to individuals who file complaints. These included statements from the Board, the Franklin County Court of Appeals, and the Ohio Attorney General. See Section C(2). In fact, the magistrate's omission of *any* mention of the Board's duty to regulate the profession is glaring and calls into question the soundness of the entire decision. A case that revolves around questions of state agency duties to protect the public cannot reasonably be decided without reference to the very reason for the Board's existence: its duty to regulate the profession in the service of public safety.

#### **5. Errors Regarding Non-Binding and Distinguishable Cases from other Jurisdictions**

There are many important distinctions between the instant matter and the decisions of *Bond v. Louisiana State Board of Examiners* (2010), Louisiana Ct. App. 2011, 2009 CA 1735, 39 So.3d 855, and *Reisner v. Cantone* (S.Ct. of New York, New York County 2011), Case No. 115400/2010. The magistrate, misstating fact and law, called the Louisiana decision "essentially the same" as the present matter. Dr. Bond is licensed and practices in Ohio, not Louisiana, and seeks action from the Ohio Board of Psychology - her licensing board - which requires her to report professional misconduct by other licensees. O.A.C. §4732-17-01(J)(4). Dr. James held an active license in Louisiana when Dr. Bond filed a complaint there, but he was not practicing psychology there. In Ohio, he was and still is an active psychologist, and is administering a professional psychology school at Wright State University. Compl. at ¶1. The magistrate ignored that the Louisiana Court of Appeals based its decision on a reading of the Louisiana Administrative Procedure Act, which is not at issue here. Nor did Louisiana's court deal with a

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public-action question of standing. The magistrate relied on *Reisner*'s holding that the claimed diminution of Dr. Reisner's psychology license from non-investigation of John Leso was "speculative and immeasurable." But Ohio recognizes intangible injuries in claims of civil assault, sexual harassment, and loss of business goodwill. The magistrate produced no considered authority distinguishing the "immeasurable" harm to Bond's professional license from these other compensable wrongs, but only borrowed the *Reisner* conclusion. Neither the Louisiana nor New York decisions, of course, bound the magistrate to find as he did. Notably, those other courts rendered their decisions only after first hearing oral argument on the salient issues, which this Court has not yet granted.

### **C. OBJECTIONS TO IMPROPER CONCLUSIONS OF LAW**

#### **1. Relators Have Standing to Petition for Mandamus**

Relators' factual allegations pertaining to both the wide-reaching and particularized harm of the Board's inaction were more than sufficient to meet the pleading stage requirements and survive Respondent's motion to dismiss. The magistrate erred in his legal conclusion; failed to apply the proper standard of review; failed to consider Relators' factual allegations and legal interpretations of binding legal authority; and improperly relied on nonbinding and distinguishable decisions from other jurisdictions.

The magistrate's decision fails to properly address and characterize Relators' allegations concerning the harm caused by the Board's actions and inaction. Neither the Board nor the assigned magistrate has thus far disputed the following allegations: that many human beings were tortured and cruelly treated, Compl. at ¶ 2; that Dr. James bears some direct responsibility for their torture and cruel treatment, *id.*, at ¶¶ 31-40; that Dr. James engaged in this conduct

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while acting as a professional psychologist , *id.*, at ¶¶ 34–35; that Dr. James is currently an influential psychologist and educator in this state, with a license to care for patients, *id.*, at ¶ 1; that Dr. James enjoys this power thanks to authority granted to him by the Board, *id.*, at ¶¶ 1, 6; that Dr. James’s alleged actions violate the rules and laws governing psychologists in this state, *id.*, at ¶¶ 3–4, 29; that Dr. James engaged in other unethical conduct that, on its face, violates additional laws and rules governing Ohio psychologists, *id.*, at ¶ 30; that Relators provided the Board with notice, credible evidence, and expert opinions supporting their allegations, and otherwise properly followed procedure, *id.*, at ¶¶ 48, 50; and that, in response, the Board has done nothing beyond read Relators’ complaint and host a meeting with Relators in which its representatives failed to pose questions or accept, at that time or subsequently, offers of additional information, *id.*, at ¶¶ 8–9, 53, 54.<sup>2</sup>

Therefore, the standing question before this Court is whether these alleged actions pose, or risk posing, significant harm to the Relators or the public at large. By mischaracterizing the alleged harm, the magistrate’s decision wrongly concludes that no significant harm has been wrought on the people of Ohio. Yet, an adjudicator who presumes as true the aforementioned factual allegations and makes all reasonable inferences in favor of the Relators could not reasonably conclude that the people of Ohio are not notably harmed by an unrepentant torturer’s continued authority to treat Ohio patients and educate future psychologists, many of whom will go on to treat Ohio patients themselves. Nor could an adjudicator reasonably conclude that the people of Ohio are not significantly harmed by the state regulatory agency’s refusal to apply the laws and rules governing psychologists to one of its profession’s most powerful members.

Once that harm is properly characterized and acknowledged, the magistrate’s refusal to

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<sup>2</sup>Even if any of these allegations were disputed, the magistrate has an obligation to take as true the factual allegations of the complaint as well as all reasonable inferences derived therefrom when addressing a motion to dismiss. See Section A.



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grant standing cannot be defended. Relators do not agree, as the magistrate's decision would imply, that the legal system is so deficient that it has no mechanism with which to remedy a public harm of such gravity. The very purpose of both mandamus and public interest standing doctrines is to correct this kind of corrosive injustice. The true question before this Court, then, becomes not whether it has the authority to remedy this injustice (it does), nor whether Relators are harmed (they are). The true question is whether this harm is more properly raised by Relators in their private capacity or as members of the greater public. Relators experience their injury as concrete and direct, for reasons articulated in earlier briefs and repeated below. Nevertheless, if the Court finds that Relators' injuries are not sufficiently distinguishable from those of their fellow Ohioans, then let the Court hear Relators in their capacities as members of the public. For, if the remedy of mandamus is to have any meaning, the Court must be empowered to hear claims that are so serious and broad-reaching that they affect millions of people across Ohio. And if this Court were to disagree, and to conclude that these particular claimants, whether in their private capacity or as members of the public, are not properly placed to seek remedy for this injustice from the Court, then Relators request that the Court, at a minimum, clarify who would.

***a. Relators Established Standing as a Matter of Public Right***

The "public-right" or "public-action" doctrine of standing applies here and provides an independent ground for standing. In framing the case as being about the Board's failure to discipline a single psychologist, see Decision at 7, the magistrate failed to note that the psychologist at issue is among the most influential in this state and was responsible for policies of torture and ill-treatment in one of the world's most notorious prisons. See Pet. Req. Oral Arg.

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at 2–3. He also failed to consider Relators’ allegation that hundreds of Ohioans have expressed concern about the seriousness of the alleged misconduct and its potential implications for people in Ohio, and that dozens of them have written to ask the Board to investigate Dr. James’ behavior. See Compl. at ¶ 51; Pet. Reply Mem. on Oral Arg. at 5. Finally, the magistrate mischaracterized the alleged harm as relating to “potential damage to the psychology profession,” see Decision at 7, when Relators alleged both potential and ongoing damage to a broader public beyond the psychology profession. See Pet. Opp. Brief at 17–20.

Furthermore, the magistrate misread *Sheward* if he concluded from it that public right standing could only be recognized in challenges to statutes that divest courts of power. See Decision at 6. The language quoted from *Sheward* is from a section in which the Court’s majority responded to the dissent’s allegation that it intended to replace the actual-injury component of standing with a public-right component *specifically in constitutional challenges to legislative enactments* where Relators “asserted that a coequal branch of government ha[d] exceeded its constitutional authority.” *Sheward* at 503. Read in context, the proper limiting rule derived from *Sheward*, to be applied generally to mandamus challenges is that the action must risk posing harm of the “magnitude and scope” caused by the tort reform statute at issue in that case. *Id.* at 504.

The Supreme Court cemented this less limited interpretation of public right standing in *State ex. Rel. Ohio AFL-CIO v. Ohio Bureau of Workers’ Comp.*, when it recognized public right standing without including in its reasoning any reference to the divestment of judicial power, even when applying *Sheward*. *State ex. Rel. Ohio AFL-CIO v. Ohio Bureau of Workers’ Comp.* (2002), 97 Ohio St. 3d 504, 506; see also Pet. Opp. Brief at 17-20. The magistrate noted that the

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Court recognized public right standing in *Ohio AFL-CIO* because permitting warrantless drug and alcohol testing of injured workers “affect[ed] virtually everyone who works in Ohio.” *Id.* at 506. However, he failed to apply that reasoning in disregarding Relators’ allegation that the public action at issue here affects everyone who relies on mental health services in Ohio. Furthermore, despite *Ohio AFL-CIO*’s being clear that the fundamental nature of the “right at stake, to be free from unreasonable searches” was an important factor in the Court’s recognition of public right standing, *id.* at 506, the magistrate ignored that the case before the Court is about one of the most fundamental human rights of all: the right to be free from torture, one that is similarly enshrined in our Bill of Rights.

The magistrate misapplied *Bowers* in reasoning that the injury caused by abdication of the Dental Board’s duty in that case (to give prospective dentists notice of the tests required for licensure) could be compared in magnitude to the abdication of Psychology Board’s duty in this case (to investigate, and if warranted by the evidence, discipline licensed psychologists responsible for the torture of children and adults). See Decision at 6-7. He failed to consider Relators’ allegation that, unlike *Bowers*, the duty sought to be compelled here *is* for the benefit of the public as a whole. See Pet. Opp. Brief at 17–20. Finally, the magistrate relied on an erroneous decision by a New York trial court, issued after the filing of Relators’ opposition brief, without noting its non-binding nature or considering important factual and legal differences between that case and the one before this Court. See Section (B)(6).

***b. Relators Established Standing as Private Litigants***

Relators established private standing by alleging enough general facts to show that they suffered direct and concrete injuries from the Board’s abdication of public duty. See, e.g., Pet.

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Opp. Brief at 10-14. Besides incorrectly framing the harm as one inflicted only on the psychology profession, the magistrate erred by imposing an improperly higher pleading burden, see Section A, and by concluding that their particularized injury allegations were conclusory or insufficiently specific. See Decision at 4. He failed to adequately consider Relators' arguments that the Board, in acting with complete lack of transparency, has withheld information that further illustrates the degree to which it has abdicated its public duty. The scale of the arbitrariness at issue is a crucial element of the injury suffered by Relators, and the magistrate erred in disregarding Relators' argument that this case should not be dismissed on these grounds without discovery and oral arguments. See Pet. Opp. Brief at 5, 8-10, 25; Pet. Req. Oral Arg. at 3. Similarly, the magistrate erred in finding the alleged injury deficient because of immeasurability. See Decision at 4. When seeking equitable relief, Relator's injury need not be quantifiably measurable in order to be direct and concrete.

In support of his statement that there was "ample authority demonstrating that the types of injury claimed by Relators do not confer standing," the only binding, precedential case cited by the magistrate was *Bowers*, a case that Relators successfully distinguished with arguments not acknowledged or disposed of by the magistrate. The other two cases cited in support are distinguishable, non-binding decisions issued by courts in other jurisdictions. See Decision at 5. Calling *Bond v. Louisiana State Board of Examiners of Psychologists* "essentially the same" case as the one at hand was a gross misstatement of fact and law. See Decision at 5 (citing *Bond*); Section B(5). The assessment of harm to Relators in Ohio is necessarily different from the assessment of injury to Dr. Bond's license in Louisiana, where Dr. James does not currently practice or serve as dean of a state psychology school, and where Dr. Bond is not licensed.

## **2. Relators Stated a Claim in Mandamus by Establishing their Clear Legal Rights,**

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**Respondent's Clear Legal Duty, and the Want of an Adequate Alternative Remedy at Law**

Relators established that the Board violated their rights by abrogating its duties to monitor and discipline the behavior of its licensees, through conduct that constituted an abuse of discretion for which no adequate alternative remedy at law exists. Comp. at 1-3, 13-18; Pet. Opp. Brief at 5-8, 20-29. They did so with sufficient particularity so as to give Respondents reasonable notice of the claim asserted. See *Hanson* at 548. Yet, inexplicably, the magistrate's decision contains no discussion of Relators' argument that the Board's purpose and source of authority derive from its fundamental duty to protect the public from the unsafe practice of psychology. See, e.g., *In re Barnes* (1986), 31 Ohio App.3d 201, 206; 510 N.E.2d 392, 398.

The magistrate erred in stating that Relators cited no legal authority requiring the Board to take the requested actions. See Decision at 8. Relators in fact provided authority that explicitly articulates the Board's duties to both the Ohio public and to individuals who file complaints. These included statements from the Board, the Franklin County Court of Appeals, and the Ohio Attorney General; they also cited the Revised and Administrative codes in further support. See, e.g., Pet. Memo. in Supp. of Compl. at 4-8. Additionally, the magistrate included no discussion supporting his conclusion, implied in his dismissal for failure to state a claim, that Relators' allegations had failed to give Respondent reasonable notice of the claim asserted.

The magistrate's decision suggests that he did not presume the truth of all factual allegations in the complaint, and that he did not make all reasonable inferences in Relators' favor, as required of adjudicators reviewing motions for dismissal based on Rule 12(B)(6). See Section A. Had the magistrate considered the legal authority cited by Relators and made the proper presumptions and inferences, he could not have reasonably concluded that the Board has

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no legal obligation to take seriously a complaint of this nature. Instead, he appears not to have followed the cited *York* and *Mitchell* standards, while erroneously applying *State ex rel. Temke v. Outcalt* (1977), 49 Ohio St.2d 189, 360 N.E.2d 701, and omitting reference to more recent relevant authority. The standard in *Temke*, that relators in mandamus “must plead *and prove* the existence of all necessary facts” is not articulated in reference to motion to dismiss. *Temke* at 190 (citing *State ex rel. Baker v. Hanefeld* (1938), 134 Ohio St. 540, 541, 18 N.E.2d 404) (emphasis added). The Court denied mandamus in *Baker* only after both parties had submitted interrogatories and produced an agreed statement of facts. *Baker* at 540. The Supreme Court clarified the requisite standard for pleading here in *Hanson*. See Section A.

Furthermore, the assigned magistrate misread and/or misapplied *Talwar v. State Medical Board of Ohio*, *State ex rel. Westbrook v. Ohio Civil Rights Comm’n*, *Gosney v. Board of Elections*, *State ex rel. Macdonald v. Cook*, and *Robinson v. Office of Disciplinary Counsel*, all of which are distinguishable cases that are not dispositive. See, e.g., Pet. Opp. Brief at 25-26, 29-30 (discussing how *Talwar* and *Gosney* involved respondents that investigated and/or provided information on why they reached their decisions, crucial facts that Relators allege are absent here, an assertion that must be presently construed in Relators’ favor). Meanwhile, the magistrate failed to address on-point authority cited by Relators and, most importantly, failed to review Respondent’s actions for abuse of discretion, which Relators correctly argued is the appropriate standard of review here. See Pet. Opp. Brief at 24-26 (citing, e.g., Resp. Brief at 11; *State ex rel. Lee v. Montgomery* (2000), 88 Ohio St.3d 233, 235, 2000-Ohio-316; *State ex rel. Village of Botkins v. Laws* (1994), 69 Ohio St.3d 383, 386, 1994-Ohio-518; *State ex rel. Browning v. Fayette Cty. Commrs.* (App.1993), 14 Ohio Law Abs 529, 529).

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### III. Oral Arguments Are Appropriate and Necessary in this Case

The assigned magistrate erred in concluding that a hearing was unnecessary. He failed to cite, let alone engage with, Relators' arguments: (1) that the Court could not decide on the legal and factual questions at issue in the motion to dismiss without engaging on some level with the allegations in the underlying complaint; (2) that all the cases from other jurisdictions described as similar or "the same" by the Board were decided only after hearing oral argument; (3) that the Board Complaint was exceptional in the seriousness of its allegations, the extensive supporting documentation provided, and its susceptibility to politicization; and (4) that *prima facie* arguments of public interest standing merit additional examination at oral argument.

This Court should hear oral arguments on this motion, as it did on the motion to dismiss another, very recent, case dealing with public standing. *ProgressOhio.org, Inc., et al., Plaintiffs v. JobsOhio, et al., Defendants*, Case No. 11-CVH-010807 (Entry, November 17, 2011)(granting oral argument on the State of Ohio's motion to dismiss on the basis of a lack of public standing).

### IV. Discovery is Appropriate and Necessary in this Case

Having erred in granting Respondent's motion to dismiss, the magistrate also erred in concluding that the discovery dispute was rendered moot. The abbreviated decision letter by the Board provides no information to the Court or the Petitioners as to what steps were or were not taken. As a result, discovery of the investigative file remains essential so that the Court may have a complete record on which to determine the Board's "clear legal duty." The trial court must constrain its exercise of discretion over discovery matters to "consider the interests of parties seeking discovery and the interests of parties and non-parties resisting discovery." *Martin v. The Budd Co.* (1998), 128 Ohio App.3d 115, 119.

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/s/ Terry J. Lodge  
Terry J. Lodge  
Co-Counsel for Petitioners

/s/ Deborah A. Popowski  
Deborah A. Popowski  
Co-Counsel for Petitioners

Tyler R. Giannini  
Co-Counsel for Petitioners

### CERTIFICATE OF SERVICE

I hereby certify that on December 30<sup>th</sup>, 2011, I electronically filed the foregoing "Relator's Memorandum in Support of Objection to Magistrate's Decision" with the Clerk of Court using the electronic case filing system, and that pursuant to system practice it was to be served electronically upon the following: Roger Carroll, email: [roger.carroll@ohioattorneygeneral.gov](mailto:roger.carroll@ohioattorneygeneral.gov), street address: Assistant Attorney-General, 30 East Broad St., 26th floor, Columbus, OH 43215-3400.

/s/ Terry J. Lodge  
Terry J. Lodge  
Co-Counsel for Petitioners