

**IN THE
INDIANA SUPREME COURT**

CAUSE NO. 71S00-0606-CV-00204

STEVE BONNEY, JOHN GIBSON,)	
ANITA GIBSON, TOM PIETRZAK,)	
RANDY NACE, CLARINDA NACE,)	
JUNE NACE, and THE CITIZENS)	Appeal from the St. Joseph Superior Court
ACTION COALITION OF INDIANA,)	
INC, an Indiana not for profit)	
corporation;)	
)	The Honorable Michael P. Scopelitis, Judge
Appellants/Plaintiffs,)	
)	
v.)	
)	Lower Court Cause No.
INDIANA FINANCE AUTHORITY;)	71D07-0604-PL-00144
STATEWIDE MOBILITY PARTNERS,)	
LLC; ITR CONCESSION COMPANY,)	
LLC; THE INDIANA DEPARTMENT)	
OF TRANSPORTATION; MITCHELL)	Court of Appeals Cause No.
E. DANIELS, Governor of Indiana; TIM)	71A03-0606-CV-239
BERRY, Treasurer of Indiana;)	
)	
Appellees/Defendants.)	

**APPELLANTS' EMERGENCY MOTION TO VACATE EMERGENCY ORDER
GRANTING TRANSFER; AND TO IMMEDIATELY REMAND TO THE COURT OF
APPEALS FOR EXPEDITED CONSIDERATION**

Come now the Appellants and move this Court on an emergency basis to vacate its Emergency Order of June 5, 2006, granting immediate transfer to the Supreme Court; that this Court immediately remand this matter to the Court of Appeals for an expedited hearing; and that the Court grant Appellants all other and proper relief.

(1) Statement of Grounds

The Appellants seek an emergency order of the Supreme Court, vacating its order of June 5, 2006, transferring this case, and ordering that this appeal be remanded to the Indiana Court of Appeals for an expedited hearing.

The grounds for this decision is the announcement by the Supreme Court that Justice Dickson will not be participating in the consideration of this case. See Exhibit A hereto. Under these circumstances, the decision in this case could now be made by the mechanism of an equally divided Supreme Court, resulting by default in the affirmance of the Order of the St. Joseph Superior Court. With all respect to the trial court, the appeal of a case of this magnitude (one which this Court in its June 5, 2006, Order determined to be one “involv[ing] a substantial question of law of great public importance”) should not be decided on the judgment of a single trial judge.

It would be an intolerable result for the constitutional issues in this case to be decided by default, and such a result would not foster confidence in the judicial system. Appellants would suggest that their right to a meaningful appeal, and the public interest, require that this Court vacate its Order granting emergency transfer, and that the matter be remanded to the Court of Appeals with instructions to conduct an expedited hearing before a panel of that Court. Remand to the Court of Appeals would at least guarantee that a majority decision would be made by an appellate court.

(2) Statement of Supporting Facts

On June 5, 2006, this Court granted emergency transfer of this appeal, which had been initiated in the Court of Appeals by the Appellants on that date.

On June 12, 2006, at 10:17 a.m., the Supreme Court, by its staff attorney, notified counsel that Justice Dickson will not be participating in the consideration of this case.

(3) Statement of Supporting Law

Under Rule 59(B) of the Appellate Rules, in an appeal on direct review by the Supreme Court, where the Supreme Court is “evenly divided in such an appeal, the trial court judgment shall be affirmed.” Although this case is not on direct review, this Rule may apply to the present circumstances if the Supreme Court does not vacate its emergency transfer Order and if this Court thereafter finds itself “equally divided.” Justice Dickson’s non-participation means that this case could be decided without any majority appellate decision.

Rule 58(C) of the Appellate Rules, on the other hand provides:

When the Supreme Court is evenly divided, after transfer has been granted, the decision of the Court of Appeals shall be reinstated.

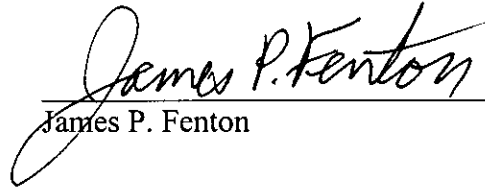
Thus, if this appeal is remanded to the Court of Appeals (where Appellants’ lodged their appeal in the first place), the Court of Appeals would have the power to render what would eventually become a final decision on the merits of the appeal, in the event that this Court later became equally divided on transfer from that Court. Only remanding this matter to the Court of Appeals will guarantee a majority decision by an appellate court.

(4) Request for Relief

The Appellants request that this Court vacate its June 5, 2006, Order granting emergency transfer of this appeal; that it remand the matter to the Court of Appeals, the Court in which this appeal was originally lodged; that the Court direct the Court of Appeals to hear the matter on a basis as expedited as possible; and that the Court grant Appellants any and all other proper relief such as may appear in the premises.

VERIFICATION

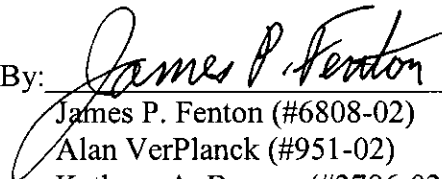
I affirm under the pains and penalties for perjury that the above and foregoing is true and accurate.


James P. Fenton

Dated: June 12, 2006

Respectfully submitted,

EILBACHER FLETCHER, LLP

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CERTIFICATE OF SERVICE


I certify that I have this 12th day of June, 2006, served a true and correct copy of the foregoing by e-mailing it to the following counsel of record and by sending a copy of the foregoing by overnight mail through the U.S. Mail or a third-party commercial carrier properly addressed as follows:

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Subject: Bonney, et al. v. Ind. Finance Authority, et al.

Counselors:

I have been asked to communicate with counsel who have appeared in this case to notify them that Justice Dickson will not be participating in the consideration of this case. I do not know whether any entry will be issued in the future by Justice Dickson regarding his nonparticipation.

Geoff Davis
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