

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, ex rel. : Case No. 2022-0409
FAITH ANDREWS, CLERK OF :
COURTS FOR LAKE COUNTY, OHIO, : Original Action in Prohibition and
 : Mandamus or in the Alternative in *Quo*
Relator : *Warranto*
 :
vs. :
 :
THE COURT OF COMMON PLEAS :
OF LAKE COUNTY, OHIO, et al., :
 :
Respondents :

RESPONDENTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

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Pursuant to S.Ct.Prac.R. 12.04(A) and Civ.R. 12(B)(6), Respondents respectfully move to dismiss Relator's First Amended Complaint for its failure to state a claim. A memorandum in support is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. PROCEDURAL HISTORY OF *IN RE: DIRECTION TO THE CLERK OF THE COURT OF COMMON PLEAS IN THE PERFORMANCE OF THE CLERK'S OFFICIAL DUTIES* AND SUMMARY OF RELATOR'S ALLEGATIONS WITHIN THE FIRST AMENDED COMPLAINT

Respondent Lake County Common Pleas Court (“Common Pleas Court”), through the seven Respondent judges of its General, Probate, Domestic Relations, and Juvenile Divisions (“the Judges”) are constitutionally obligated to ensure that those pursuing its services obtain the fair, impartial, speedy, and sure administration of justice. (Ohio Constitution Article IV, Sections 1, 4). In meeting these requirements, the Judges have statutory authority to appoint and direct staff to assist them in carrying out the work of the court; however, many of its ministerial functions are likewise carried out by Relator Faith Andrews, who was separately elected to serve as the Lake County Clerk of Courts (“Clerk” or “Clerk Andrews”) in January 2021, pursuant to R.C. 2303.01. (First Amended Complaint (“Am. Compl.”), ¶¶ 11, 12.)

Clerk Andrews is responsible for generating, filing, recording, maintaining, and utilizing court records in the Common Pleas General and Domestic Relations Divisions. *See generally* R.C. 2303.08, 2303.09, 2303.12, 2303.13, 2303.14, 2303.15, 2303.17, 2303.26. Additionally, pursuant to R.C. 2303.01 and 2303.03, she provides these functions to the Eleventh District Court of Appeals, as well as to the Common Pleas Probate and Juvenile Divisions and the three municipal courts within Lake County in all their cases that proceed to appeal. Pursuant to Ohio Crim. R. 21 and R.C. 2305.01, Clerk Andrews facilitates the jurisdictionally appropriate transfer of matters between the Common Pleas General Division and the County’s three municipal courts. In addition to all these compulsory roles, Clerk Andrews and the various divisions of the Common Pleas Court receive the services of a shared Court Information Technology Department; historically, the Court and Clerk shared in the oversight of those staff as well. (Am. Compl., ¶ 17; Am. Compl., Ex. I, ¶¶

5, 60-61, 63.)

Notwithstanding Clerk Andrews' status as a separately elected official, her duties that support and affect the operations of the Common Pleas Court are overtly and explicitly subject to the statutory direction and control of its Judges. *See* R.C. 2303.26 (“The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon the clerk by statute and by the common law; and ***in the performance of official duties the clerk shall be under the direction of the court.***” (Emphasis added).) In addition to the Common Pleas Court’s statutory authority to direct the work of the Clerk, the Judges likewise have the inherent authority to direct her work that supports the Common Pleas Court pursuant to the Ohio Constitution and over a century of common law. *See* part II.C.2.

The Judges have ethical obligations in executing the duties of their own offices, and in overseeing the conduct of the court staff they appoint and of the court officials they don’t: They are ethically obligated to implement controls that preserve the principles of justice and rule of law, while maintaining and enhancing confidence in the legal system. (Ohio Code of Judicial Conduct (“CJC”), Preamble, [1].) The Judges are likewise ethically obligated to require that the staff they appoint, ***and the court officials and others who are subject to their direction and control***, act consistently with the Judges’ own obligations under the Code of Judicial Conduct. (CJC R. 2.12(A).) Put together, these authorities unequivocally authorize—and unequivocally *obligate*—the Judges to require the Clerk to perform her court duties in a manner that is consistent with their own ethical obligations under the Code of Judicial Conduct.

Among other things, this ethical mandate requires the Judges to require the Clerk (as a court official whom they have the authority to direct and control) to “act at all times in a manner that promotes public confidence in the integrity and propriety of the judiciary” (CJC R. 1.2); they

must likewise prohibit her from performing her administrative duties in a manner that manifests bias or prejudice or constitutes harassment—including, but not limited to, bias, prejudice, and harassment based upon sex, gender, disability, age, and sexual orientation (CJC R. 2.3(B)); and they must require her to behave in a manner that is patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judges deal in an official capacity (CJC R. 2.8(B)).

Perhaps most important of all, the Judges have sworn an oath of office, memorialized in R.C. 3.23, to faithfully and impartially discharge the duties of the office—which principally requires them to ensure their conduct, and the conduct of those subject to their direction and control, facilitates the uninterrupted, fair, and efficient administration of justice. This obligation has no exceptions because of its paramount importance. Even in the midst of Ohio entering a state of emergency upon the onset of the global COVID-19 pandemic, this Court reminded Ohio’s judges that “as members of the judiciary, we must formulate plans to respond *** in a manner that allows courts to meet both our purpose and essential functions. Closing the courthouse and disrupting services is not a plan.” The extent and breadth of this responsibility is the reason courts are empowered with “all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions.” *In re: Furnishings for Courtroom Two*, 66 Ohio St.2d 427, 430, 423 N.E.2d 86 (1981). In addition to the authorities expressly afforded them in the Revised Code, including the specific ability to direct the work of the Clerk, they have power to assure their operations remain accessible—whether through orders that ensure adequate funding, or through *ex parte* orders and contempt proceedings to enforce compliance. *State ex rel. Edwards v. Murray*, 48 Ohio St.2d 303, 305 (1976), *citing Zangerle v. Court of Common Pleas*, 141 Ohio St. 70 (1943).

Against the backdrop of these authorities, the Common Pleas Court, through all seven

Respondent judges of the General, Probate, Domestic Relations, and Juvenile Divisions, initiated *In re: Direction to the Clerk of the Court of Common Pleas in the Performance of the Clerk's Official Duties*, Lake County Court of Common Pleas, Case No. 22AA000001 (May 4, 2022), by executing and filing a Journal Entry to Clerk Andrews (“May 4 Entry” or “Journal Entry,”), directing her to comply with a series of requirements the Common Pleas Court deemed necessary to preserve its effective and efficient functioning. (Am. Compl., ¶ 45; Am. Compl., Ex. I, ¶ 99.)

The Common Pleas Court’s May 4 Entry described firsthand reports from Clerk Andrews’ staff, detailing extensive and troubling conduct since the beginning of her term in office, along with current and prospective effects of this conduct on the Common Pleas Court’s operations (Am. Compl, Ex. I, ¶¶ 19-70, 80-83). It described the Common Pleas Court’s equally extensive efforts to determine the extent, severity, and accuracy of the staff’s reports of this conduct, and its thorough, unsuccessful efforts to informally remedy these concerns with Clerk Andrews before resorting to judicial action (Am. Compl, Ex. I, ¶¶ 70-79, 84-90). The May 4 Entry described the escalating threats Clerk Andrews’ unresolved behavior posed to the continued operation of the legal division of the Clerk’s Office and the public’s confidence in the judicial branch—as well as its potential to upend the functioning of the Lake County court system as a whole. *Id.*

In response to these concerns, the Common Pleas Court issued the May 4 Entry, issuing directives exclusively pertaining to the legal division of the Clerk’s office: It instructed the Clerk to abstain from further misconduct and engage in remedial and preventive measures; to perform her legal division duties at a location and in a manner that would ensure the continuity of court operations and uninterrupted access to court records; to follow directives to remedy and maintain the morale, productivity, security, treatment, and continuity of staff within the legal division of the Clerk’s Office and Courts IT Department; and to employ protocols to protect the public’s

confidence in the fair and proper administration of justice (Am. Compl., Ex. I, ¶¶ 8, 100-131).

In response, Clerk Andrews has now brought this action in *mandamus* and prohibition, or, alternatively, in *quo warranto*. She seeks a writ of *mandamus*, claiming this Court must order the Common Pleas Court and its Judges to vacate its May 4 Entry, as well as the *draft* Entries it provided her but never journalized—these drafts were part of the Judges’ above-described informal efforts to remedy Clerk Andrews’ conduct before issuing the May 4 Entry. Clerk Andrews likewise seeks a writ of prohibition to preclude enforcement of the Judges’ May 4 Entry, as well as the earlier drafts the Judges provided her but never journalized. Alternatively, she seeks a writ of *quo warranto*, restoring her to the office from which she alleges she has been constructively removed.

For the reasons that follow, this Court must dismiss this action for failure to state a claim.

II. ARGUMENT

A. STANDARD OF REVIEW

In determining this motion to dismiss, all factual allegations of the complaint must be presumed to be true and all reasonable inferences must be made in favor of the nonmoving party. *Perez v. Cleveland*, 66 Ohio St.3d 397, 399, 613 N.E.2d 199 (1993). However, the attachments Clerk Andrews appended to her Complaint, and matters she referenced within it, are among the items this Court may review in evaluating the sufficiency of her pleadings to state a claim; reliance on these materials does not convert this motion into one for summary judgment or require an alternative writ. *State ex rel. Washington v. D’Apolito*, 156 Ohio St.3d 77, 2018-Ohio-5135, ¶ 10, 123 N.E.3d 947; *State ex rel. Peoples v. Schneider*, 159 Ohio St.3d 360, 2020-Ohio-1071, ¶¶ 2-5, 9; *State ex rel. Crabtree v. Franklin County Bd. of Health*, 77 Ohio St.3d 247 n.1 (Even when Relator merely referenced his underlying criminal case in his *mandamus* complaint, but didn’t

attach the docket or pleadings, this Court determined it was proper to judicially notice them to determine the original action's claims were precluded by *res judicata*.)

Further, this Court is not required to accept any allegations as true when they are contradicted by the Complaint's attachments. *D'Apolito*, 156 Ohio St.3d 77 at ¶ 10. It further need not accept "unsupported conclusions" within a Complaint for extraordinary relief; these "are not considered admitted and are insufficient to withstand a motion to dismiss." *State ex rel. Sherrills v. Cuyahoga County Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995).

A writ of prohibition is an extraordinary judicial writ a superior court directs to an inferior tribunal that is about to exercise unauthorized **judicial** authority, commanding it to cease abusing or usurping judicial functions. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 1998 Ohio 275, 701 N.E.2d 1002 (1988); *State ex rel. Eaton Corp. v. Lancaster*, 40 Ohio St.3d 404, 409, 534 N.E.2d 46 (1988).

Whereas writs of prohibition only address exercises of judicial authority, writs of *mandamus* may *not* interfere with them: R.C. 2731.03 provides that writs of *mandamus* may require an inferior tribunal to exercise its judgment, or to discharge any of its functions, but they may not control judicial functions or discretion—even where that discretion has been grossly abused. *State ex rel. Rashada v. Pianka*, 112 Ohio St.3d 44, 2006-Ohio-6366, 857 N.E. 2d 1220, ¶ 3; *State ex rel. Nauth v. Dirham*, 161 Ohio St.3d 365, 2020-Ohio-4208, 163 N.E.3d 526, ¶ 11, citing *State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 2005-Ohio-5061, 836 N.E.2d 529, ¶ 11; *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 139 Ohio St.3d 171, 2014-Ohio-1685, 10 N.E.3d 697, ¶ 14. Writs of *mandamus* command the performance of an act "that the law specially enjoins as a duty resulting from an office." R.C. 2731.01. They are distinguishable from injunctions because they must direct the official or entity to *do*

something—they are neither preemptive nor preventive in nature. *State ex rel. Smith, v. Indus. Comm.*, 139 Ohio St. 303, 22 O.O. 349, 39 N.E.2d 838, ¶ 2, syll (1942).

To be entitled to a writ of *mandamus* or prohibition, Clerk Andrews has the burden of asserting claims she can prove by clear and convincing evidence. *State ex rel. Evans v. McGrath*, 153 Ohio St.3d 287, 2018-Ohio-3018, 104 N.E.3d 779, ¶ 4; *State ex rel. Federle v. Warren Cty. Bd. of Elections*, 156 Ohio St.3d 322, 2019-Ohio-849, 126 N.E.3d 1091, ¶ 10. Further, writs of *mandamus*, prohibition, and *quo warranto* are unavailable where an adequate remedy exists at law. *Id.*; *State ex rel. Johnson v. Talikka*, 71 Ohio St.3d 109, 1994-Ohio-260, 642 N.E.2d 353. However, these extraordinary writs each otherwise require the assertion of different allegations of fact to state a viable claim.

B. THE ELEMENTS AND PROOF REQUIRED TO OBTAIN RELIEF IN PROHIBITION, MANDAMUS, AND QUO WARRANTO EACH DIFFER. DETERMINING WHAT MATTERS ARE (AND ARE NOT) BEFORE THIS COURT FOR REVIEW—AND WHETHER EACH CHALLENGED EVENT AMOUNTS TO RESPONDENTS’ EXERCISE OF JUDICIAL OR ADMINISTRATIVE AUTHORITY—IS DISPOSITIVE IN EVALUATING ALL CLAIMS.

Clerk Andrews’ First Amended Complaint unequivocally challenges the May 4 Entry. (Am. Compl., ¶¶ 2-4, 45-54, 58-59, 61-65, 69-76, 78-81.) However, she frequently references an unspecified collection of other “Improper Journal Entries,” which she characterizes as “including,” but not being limited to the May 4 Entry. (Am. Compl., ¶¶ 1, 4-5, 8, 39-41, 45, 58, 61-65, 69-71, 73, 75-76, 78.) To be clear, while Clerk Andrews’ allegations interchangeably and collectively reference three categories of documents and communications, these categories are distinct—and those distinctions have direct relevance to, and are dispositive in assessing the elements of, Clerk Andrews’ claims. Similarly, whether the Common Pleas Court and its Judges’ challenged conduct exercised their administrative or judicial authority is a dispositive element in assessing *mandamus* or prohibition eligibility.

1. A court’s allegedly improper exercise of judicial authority may only be challenged on appeal, and in prohibition—it may not be challenged in *mandamus*.

While allegedly improper exercises of judicial authority may be appealed, in the exceptional circumstance where judicial power is exercised (or is about to be) without any jurisdiction, a writ of prohibition may likewise preempt or redress those improper exercises of power. To demonstrate entitlement to a writ of prohibition, Clerk Andrews must establish Respondents are about to exercise, or have already, exercised *judicial* or quasi-judicial power. *Fiser*, 164 Ohio St.3d 1, at ¶ 7 (citing *State ex rel. Balas-Bratton v. Husted*, 138 Ohio St.3d 527, 2014-Ohio-1406, 8 N.E.3d 933, ¶ 15). *Id.* By contrast, actions in *mandamus* cannot redress the exercise of judicial authority. R.C. 2731.03. *Mandamus* “may not be used to control judicial discretion, even where that discretion is grossly abused.” *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 119, 515 N.E.2d 914 (1987); *Rashada*, 112 Ohio St.3d 44, at ¶ 3.¹

2. A court’s allegedly improper exercise of administrative authority may neither be appealed nor challenged in prohibition. Instead, the recipient of the court’s administrative directives may initiate actions for injunctive and/or declaratory relief; additionally, he or she may defend contempt or *mandamus* proceedings the court has initiated to enforce those administrative directives. However, recipients of court administrative action may not typically *initiate* an action in *mandamus* to vacate administrative orders or actions.

Where Respondents were only exercising *administrative* power, this is not redressable in prohibition—which requires the exercise of *judicial* authority. *Fiser*, 164 Ohio St.3d 1, at ¶¶ 26-29; *State ex rel. Lorain Cnty. Bd. of Comm’rs v. Lorain Cnty. Court of Common Pleas*, 143 Ohio

¹ One narrow exception exists that is inapplicable here: Where a court completed its adjudication of a matter and entered a default judgment against a party who learns of it after its conclusion because they were never served summons, this Court has permitted relief in both prohibition and *mandamus* to vacate the judgment. *See, e.g., State ex rel. Ballard v. O’Donnell*, 50 Ohio St.3d 182, 553 N.E.2d 650 (1990); and parts II.B.2.b. and II.D.3.b, *infra*.

St.3d 522, 2015-Ohio-3704, 39 N.E.3d 1245, ¶¶ 16-20. This remains the case, even where the manifestation of that administrative authority is an executed, journalized, administrative court order—which is still an administrative act, not a judicial one. *Id.*

Further, the exercise of a court’s administrative authority—whether in an administrative order or otherwise—is typically incapable of being appealed because there is no live controversy. *Id.*; see also *Mann v. Conlin*, 22 F.3d 100, 104 (6th Cir. 1994); *Morrison v. Lipscomb*, 877 F.2d 463, 464-466 (6th Cir. 1989); *State v. Pennington*, 187 Ohio App.3d 526, 2010-Ohio-2139, 932 N.E.2d 941, ¶ 17; *In re 2008 Operating Budget Lake County Juvenile Court*, 2008-Ohio-4048, Lake County App. No. 2008-L-044, ¶¶ 4, 9-10); *In re Furnishings and Equipment for Courtroom Two*, 66 Ohio St.2d at 430-31. Further, to the extent they are likewise interlocutory, *mandamus* cannot be used as a means of circumventing the unavailability of an appeal. *State ex rel. Heck v. Kessler*, 72 Ohio St.3d 98, 1995-Ohio-304, 647 N.E.2d 792 (1995).

Instead, when courts exercise their administrative authority, the recipients of those directives may challenge the exercise of that authority in only three ways—the first of which is affirmative, and the latter two are defensive:

- a. **A court’s allegedly improper exercise of administrative authority may be challenged within an action for injunctive and/or declaratory relief.**

Recipients of the allegedly improper exercise of administrative authority may pursue actions for injunctive relief under R.C. Chapter 2727 and/or declaratory relief under R.C. Chapter 2721 to enjoin the enforcement of the exercise and/or to obtain a determination the exercise was improper and void. There are examples of litigants using both to challenge a court’s allegedly improper exercise of administrative authority:

Injunctive Relief: In *Malone v. Court of Common Pleas*, 45 Ohio St.2d 245, 344 N.E.2d

126 (1976), the judge with administrative authority entered into a collective bargaining contract that agreed to various terms in staff wages, hours, and working conditions. During the term of the still-active contract, the judges elected a new administrative judge who notified court staff that he did not regard his predecessor's agreement as binding upon him as the newly elected administrative judge; he therefore apprised them that he would only include those provisions from the contract into the court's personnel policies that he deemed appropriate. *Id.* at 246-247.² In response, an employee sued for injunctive relief to prevent all the court's judges from imposing terms and conditions that deviated from the contract. *Id.* at 245. The trial court declined a claim for monetary relief, but it granted the employees' request for an injunction; the Court of Appeals affirmed. *Id.* at 247. This Court took no issue with the lower courts' ability to enjoin the judge's exercise of administrative authority from violating the law; however, it reversed on different, exclusively substantive, grounds: Because R.C. 2151.13 expressly gave discretion over the terms and conditions of employment to the administrative judge, this Court concluded that the prior administrative judge lacked authority to enter into an enforceable contract that bound the next—only because it concluded the contract itself was contrary to law, it reversed the injunction that the lower courts had imposed to compel compliance with the contract. *Id.* at 248.

Declaratory Relief: In *Board of County Commissioners v. Hensley*, 2003-Ohio-5730, Montgomery County App. No. 19754, ¶ 3, two judges issued administrative orders to establish two new judicial assistant positions, and they directed the County Commissioners to fund these positions, without the majority approval of their five-judge court. *Id.* These directives were

² Obviously, an administrative judge's informal communication to staff was neither an order nor appealable—it amounted only to the exercise of the judge's administrative authority; however, even if it had been executed and memorialized in a journalized administrative order, it would still have only amounted to the exercise of administrative, not judicial, authority—and it still would not have been appealable. *See* part II.B.3.a., *infra*.

executed and journalized in a court order—this exercised the judges’ administrative authority, such that the order was not appealable. *See* part II.B.2.c. Therefore, the Commissioners filed an action to seek a declaratory judgment that the judges lacked authority to issue the administrative orders without a majority vote of their court, thus removing the County’s obligation to fund the positions. *Id.* The judges counterclaimed, seeking a contrary declaration that they were authorized by the Ohio Constitution, Revised Code, and common law, to issue the orders. *Id.* This led to an evidentiary hearing, decision, and declaratory judgment that determined the judges lacked the individual authority to issue the administrative orders; that only orders by a majority of the court’s judges or by its administrative judge, acting with the delegated authority of the majority, would have been proper and enforceable; and, therefore, the County was not required to appropriate funds for the new positions. *Id.* at ¶¶ 4, 14.³

These represent the only clearly affirmative remedies that recipients of administrative orders like Clerk Andrews may pursue to obtain relief. Two additional remedies likewise exist, but they typically rely on the court making the first move:

b. An allegedly improper exercise of administrative authority may be challenged after a court initiates *mandamus* or contempt proceedings arising from non-compliance with its directives.

Next, when trial courts issue administrative orders or otherwise exercise their administrative authority, this Court has recognized two additional mechanisms exist for courts to obtain enforcement of those directives and for recipients to challenge them, both of which the court initiates: The ordering court may pursue an order in *mandamus* that compels compliance with its

³ For all the reasons articulated in part II.B.2.b., the judges could have initiated an action in *mandamus* to obtain a writ instructing the Commissioners to fund the position, which the Commissioners could have challenged within those proceedings; or, as articulated in part II.B.2.b., the judges could have issued citations for the Commissioners to show cause why they should not be held in contempt after they declined to fund the positions, and the Commissioners could have challenged the propriety of the administrative orders within those proceedings.

administrative order; or it may initiate proceedings in contempt. *In re 2008 Operating Budget Lake County Juvenile Court*, 2008-Ohio-4048, ¶¶4, 9-10); *In re Furnishings and Equipment for Courtroom Two*, 66 Ohio St.2d at 430-31.⁴

Recipients of the initial administrative orders or exercise of administrative authority typically cannot appeal them—both because they do not present a live case or controversy; and, if they are memorialized as court orders at all, they are typically interlocutory. *See* cases cited in part II.B.2. However, when trial courts seek orders in *mandamus* to enforce their administrative orders, or when they exercise their contempt powers to address non-compliance, those they have ordered to act may litigate the scope and authority of the administrative order within the *mandamus* or trial court contempt proceeding itself, as well as on appeal—which becomes a live, appealable controversy, even when the original administrative order was not:

When a judge undertakes to enforce his [administrative] order by proceedings in contempt*** a board’s remedy is by way of appeal from a finding of contempt. Until there is a finding and order in the contempt proceedings, there is no final appealable order. The board *** may contest the propriety of the order at the contempt hearing when explaining their refusal to comply with the order. If the board is held in contempt, the propriety of the order will be subject to review on appeal.

⁴ Contempt is available for administrative orders, as well as judicial ones. In *In re Brooks*, 145 Ohio App. 3d 380, 381, 763 N.E.2d 201 (8th Dist. 2001), a Municipal Court issued an administrative funding order, then a show cause order for a contempt hearing, to the City Finance Director after he failed to implement pay raises for staff for over two months. This was deemed proper because the Order pertained to “matters which concern the court’s ability to function and carry out its basic purposes...[which] it had the power to enforce...by contempt proceedings.” *Id.* at 383. *See also Edwards*, 48 Ohio St. 2d at 305 (courts have power to issue orders that concern the functioning of the court and find parties in contempt when they fail to comply with those orders), *citing Zangerle*, 141 Ohio St. 70; *In re Obstruction of Summit County Driveway*, 108 Ohio App. 338, 338, 340-41, 161 N.E.2d 452 (9th Dist. 1959)(County Judges issued *ex parte* order restraining police from obstructing driveway to county jail that interfered with the court’s operation. “Over and beyond the powers given by the Constitution and the statutes to the courts, a court possesses all reasonable powers necessary to preserve the free and untrammled exercise of its functions and to that end may, in appropriate cases, conduct *ex parte* hearings and make *ex parte* orders without formally instituting an action to secure the desired relief.”)

In re: Furnishings and Equipment for Courtroom Two, 66 Ohio St.2d at 430-31, fn. 4.

When courts initiate proceedings in *mandamus* to obtain the enforcement of their administrative orders—just like when they initiate proceedings in contempt—it affords the noncompliant respondent a substantive forum to challenge the propriety of the court’s exercise of administrative authority or its administrative order.

- c. **When a court issues an administrative order or exercises administrative authority, it may seek an order in *mandamus* to compel enforcement of its directives—and the respondent to that action may challenge the propriety of the court’s exercise of administrative authority within that proceeding. However, recipients of administrative orders or directives typically lack the ability to appeal or independently initiate an action in *mandamus* to vacate the administrative act.**

Notwithstanding the robust body of case law discussing courts’ ability to enforce their administrative orders in *mandamus* and contempt, there is an important distinction in this authority: Courts may use these mechanisms to enforce their administrative orders, but case law has *not* supported the recipient of those administrative orders *initiating* their own action in *mandamus* to challenge or vacate those orders and directives. This is true for several reasons:

First, R.C. 2731.03 notes that writs of *mandamus* may require an inferior tribunal to exercise its judgment, or to discharge any of its required functions. An order in *mandamus* commands the performance of an act “that the law specially enjoins as a duty resulting from an office.” R.C. 2731.01. That is, an order in *mandamus* must instruct the Common Pleas Court and its Judges to *do* something—it cannot be preemptive, preventive, or curative in nature. Pursuing an order in *mandamus* to vacate an administrative order or directive really amounts to a request for an injunction, which is not accessible through *mandamus*.

Additionally, *mandamus* “will not lie to control judicial discretion, even if that discretion is abused.” *State ex rel. Rashada v. Pianka*, 112 Ohio St.3d 44, 2006-Ohio-6366, 857 N.E. 2d

1220, ¶ 3. In most respects *mandamus* cannot direct the exercise of *judicial* authority; at most, it may direct a judge to exercise that judicial authority by making a decision, but it cannot be used to direct what that decision will be. Further, the only functions an order in *mandamus* may affect—*administrative*—are only available when the law requires the performance of the particular act being requested. A writ of *mandamus* must compel action or command the performance of a duty—it may not restrain, forbid, or adjust the specific manner of performing an act, which are the remedies reachable through an injunction or appeal. *See, e.g., Smith*, 139 Ohio St. 303, at ¶ 2. That is, *mandamus* relief only exists to require behavior “the law specially enjoins as a duty resulting from an office.” R.C. 2731.01. As it pertains to courts’ administrative duties, those obligations that are sufficiently clear to be ordered in *mandamus* will be very few and far between. A court that has already exercised its administrative judgment or discharged its administrative functions *has* already acted—a writ of *mandamus* to require it to do so in a different way effectively amounts to an impermissible appeal of that administrative order or an injunction that is unavailable in *mandamus*—not a directive to a public office to discharge a clear legal duty.⁵

As to the particular challenges Clerk Andrews attempts to bring here, she is attempting to bring defensively-postured arguments about the Judges’ conduct in an action that requires her to affirmatively prove they failed a legal duty. It simply doesn’t work: For all the reasons articulated in part II.C.2., the Common Pleas Court and its Judges unequivocally have ample jurisdiction and

⁵ There are very limited exceptions to this rule, and none applies here. If the court had a defined legal duty it had objectively failed to fulfill, a Relator could theoretically pursue relief against them in *mandamus* to require their compliance—*e.g.*, if they failed to maintain open sessions of court for at least 240 days per year pursuant to R.C. 2301.11. However, absent a very binary example of this nature, it is difficult to fathom a circumstance where the Clerk (or anyone) could *initiate* a request for relief in *mandamus* against the Judges, as it requires a demonstration they have somehow failed to comply with a clear legal duty—and that failure may be remedied with an order to affirmatively engage in the requested, specific behavior.

authority to direct the Clerk’s operations however they affect the functions that are inextricably intertwined with the Court’s records and operations. This authority is expressly provided within R.C. 2303.26, as well as consistently reiterated in Ohio law as part of the Court’s Constitutional and inherent authority. Clerk Andrews cannot articulate a claim that would demonstrate the Judges have somehow failed to comply with a legal duty in this regard, as their discretion is wide-ranging and subject to their assessment of the needs of the Court.

Clerk Andrews attempts to bypass this by arguing the “clear legal duty” the Judges have is to vacate its May 4 Entry. This likewise fails because the Entry—which is an exercise of *judicial* authority—cannot be addressed in *mandamus*, only prohibition. *See* part II.B.1. A request to vacate its Entry in *mandamus* is effectively an impermissible attempt to modify a judicial order, which this Court cannot do.

Another exception exists, but it does not apply here: If a court completely lacked jurisdiction to render an order, *mandamus* and prohibition are both available to compel a *vacatur*. *State ex rel. Ballard v. O’Donnell*, 50 Ohio St.3d 182, 184, 553 N.E.2d 650 (1990). However, petitioners who seek the same relief in a *mandamus* action that would be available from an appeal—*i.e.*, an order to the trial court to vacate the Entry—are not entitled to a writ of *mandamus*, which cannot be used as a substitute for an appeal. *D’Apolito*, 156 Ohio St.3d 77 at ¶ 32, *citing State ex rel. Vill. of Richfield v. Laria*, 138 Ohio St. 3d 168, 2014-Ohio-243, 4 N.E.3d 1040, ¶ 11; *State ex rel. West v. Price*, 62 Ohio St.2d 143, 144, 404 N.E.2d 139 (1980).

Mandamus is only available in this scenario when a jurisdictional defect deprived the relator of the typical available process to such a degree that the court acted without jurisdiction: For example, *mandamus* relief was potentially available to relators who sought to vacate a judgment entered against them when they were never served the complaint and lost their adequate

remedy of an appeal—but only because this procedural error completely deprived the court of jurisdiction over them as a result. *D’Apolito*, 2018-Ohio-5135, ¶ 2; *Ballard*, 50 Ohio St.3d at 184.

This was not the case here.

As long as the Common Pleas Court acted with some jurisdiction (which was overwhelmingly the case here—*see* part II.C.2.), *mandamus* is not an available remedy to adjust how a court exercised that jurisdiction, even if it did so in error or “where that discretion is grossly abused.” *Niehaus*, 33 Ohio St.3d at 119. Consequently, Clerk Andrews cannot affirmatively pursue an order in *mandamus* to vacate any of the Common Pleas Court’s exercises of authority.

3. Because the elements and proof required to obtain relief in prohibition, mandamus, and quo warranto each differ, this Court must identify each of the challenged events and ascertain whether each amounted to Respondents’ exercise of judicial or administrative authority—as these variables are dispositive in evaluating Clerk Andrews’ claims.

For all the reasons articulated in part II.C.2., the Common Pleas Court and its Judges have jurisdiction and authorization to direct the Clerk’s operations as they affect the functions that are inextricably intertwined with the Court’s records and operations. This jurisdiction is expressly provided within R.C. 2303.26, as well as consistently reiterated in Ohio law as part of the Court’s inherent authority. However, distinguishing between and determining the nature of each category of conduct or events reveals elements that are dispositive in assessing Clerk Andrews’ claims.

In *Lorain Cty. Bd. of Comms.*, 143 Ohio St.3d 522, at ¶ 16, this Court articulated a two-factor test to determine whether a court was exercising judicial or administrative authority. It added two more factors in *Fiser*, 164 Ohio St.3d 1, at ¶ 11-17:

- (1) Do the orders/exercise of authority facilitate the administration of the court’s “own business” (administrative) or are they made in the context of a dispute between the court and outside parties (judicial)?
- (2) If the exercise of authority relates to the appropriation of funds, is that appropriation coming from the court’s own funds (administrative) or others’ funds (judicial)?

- (3) Did the judge exercise judicial review of a matter—*e.g.*, did it determine a controversy between adverse parties by ascertaining facts, applying law to facts, and rendering a judgment?
- (4) Did the judge threaten to hold anyone who violated his or her entry in contempt, or otherwise threaten to compel obedience to a court order?

a. The Common Pleas Court’s months of informal discussions and disagreements with the Clerk about their shared operations—including the Judges’ attempts to negotiate conditions with the Clerk’s agreement—exclusively comprised the exercise of administrative authority. The Judges’ provision of draft orders to Clerk Andrews to consider *in lieu* of facing judicial action were also administrative acts.

The only exercise of judicial authority arose when the Judges actually escalated these discussions and disagreements into an executed, journalized, and a binding court order.

Clerk Andrews asserts that five of the Respondent Judges engaged in various discussions with her—in person, in letters, and in e-mails—in the months preceding the May 4 Entry, to address her workplace behavior. She likewise asserts that they provided her at least two *draft* entries that they never filed or journalized, but which they indicated they would ultimately file and journalize if she did not voluntarily consent to comply with the drafts’ terms. (Am. Compl., Exs. C, E.) Clerk Andrews asserts that neither of these draft entries were ever filed or journalized, but she nonetheless complied with their proposed terms (which had some similarities and some differences in substance to the May 4 Journal Entry the Respondents ultimately *did* file and journalize; *see* part II.B.3.b.). (Am. Compl., ¶¶ 16-33, 40-41, 49.)

Clerk Andrews asserts a series of unfounded legal conclusions that are inaccurate as a matter of law, including that these draft entries “ordered” her to comply with conditions (Am. Compl., ¶ 22, 25); she regularly mischaracterizes these unjournalized draft entries and orders as “Journal Entries” or “Orders,” (Am. Compl., ¶¶ 17-33, 37-42, 45); and she asserts she was deprived

of adequate time to consider complying with the draft entries’ terms (Am. Compl, ¶ 29), having “no choice but to submit.” (Am. Compl, ¶ 30.) Contrary to Clerk Andrews’ characterizations that her compliance with these draft entries’ terms was somehow compulsory and involuntary, the legal reality is that, because they were draft entries, they were not binding; the articulated conditions she alleges the Respondent Judges “ordered” her to follow were merely conditions the Judges relayed they *would later memorialize into binding judicial orders*, if she failed to voluntarily comply with the drafts’ terms—which they likewise had clear authority to do. *See* part II.C.2..

Clerk Andrews seeks to preclude enforcement of its May 4 Entry, *as well as the prior draft Entries it provided her but never journalized—i.e.*, the draft entries it provided her on November 15, 2021, and March 4, 2022. (Am. Compl, ¶¶ 17-18, 19-33, Exs. C, E). Both the informal requests and the draft entries the Court provided the Clerk had no legally enforceable effect upon her. By definition, “draft entries” that are never filed and journalized are not actually entries at all—they are drafts that are devoid of any legal or judicial significance.⁶

As a matter of law, regardless of whether the Judges imposed informal directives, forecasted sanctions for noncompliance, or—as here—forecasted the *future* use of a judicial order that itself forecasted future sanctions for noncompliance, these efforts are all legally unenforceable because of Clerk Andrews’ status as a separately elected official—thereby demonstrating their administrative character. These informal “directives” had no different impact than any other informal requests to abide by a standard of conduct. Because they were never filed nor journalized,

⁶ A court speaks through its journals, and an entry is effective only when it has been journalized. Civ. R. 54(A), Civ.R. 58(A), Crim.R. 32(C). To journalize a decision means that certain formal requirements have been met—the decision is reduced to writing, it is signed by a judge, and it is filed with the Clerk so that it is a permanent record of the Court. This is when it obtains the status of a judgment. *Id.*; *State v. Ellington*, 36 Ohio App.3d 76, 77-78, 521 N.E.2d 504, 506 (9th Dist.1987); *San Filippo v. San Filippo*, 81 Ohio App.3d 111, 112, 610 N.E.2d 493 (9th Dist.1991).

they were never Court orders pursuant to Civ.R. 54(A), Civ.R. 58(A), or Crim.R. 32(C), and they had no legal effect whatsoever: The Court had no ability to impose redress in response to the Clerk's failure to comply with the terms of these draft entries that she voluntarily consented to follow because the Clerk was operating at that time by agreement only.

Everything preceding this point had a reach that was unequivocally administrative:

For instance, if the Judges issued directives of this type to the staff who serve at their pleasure, their possible remedies for non-compliance would include issuing workplace discipline or terminating their employment—but *these efforts would still be purely administrative*. They could not issue a citation for contempt from an employee's noncompliance with a directive, even if styled as a draft entry, because that directive was only administrative. When the Judges issued directives of this type to the Clerk, as a separately elected official whom the Judges could neither discipline nor terminate in the event of noncompliance (but whom the law authorizes them to direct in the performance of their duties), their recourse was even more limited. They could make the same requests again, or in a different way (*i.e.*, attempting another administrative approach), or they could escalate those requests into orders that harness the authority of the court.

Elsewhere, Clerk Andrews alleges she was deprived of adequate time to consider complying with the Judges' proposed draft conditions; however, the fact the proposed conditions were unenforceable *drafts* (*i.e.*, unenforceable administrative directives)—by definition—meant she remained free from any legal obligation to begin or continue complying with those conditions, and that no legal penalty (*e.g.*, a citation to show cause why she should not be held in contempt, nor an action in *mandamus* to enforce a draft entry) could follow her non-compliance or subsequent revocation of voluntary compliance. At best—and according to her own allegations—the consequence of declining to voluntarily comply with the draft conditions was that the Judges could

follow through on their pledge to subsequently memorialize those draft conditions into a binding judicial order that—only then—had any legal effect.

Similarly, Clerk Andrews’ assertion the Respondents’ draft entries left her with no choice but to submit to its terms is not—and cannot—be true as a matter of law. At best, she asserts she had no choice but to comply with these terms to avoid the Court later making good on a pledge to issue a binding order that would later, *and actually*, require her compliance. These allegations amount to claims that the Common Pleas Court and its Judges threatened to prospectively exercise judicial power, through an order. (*See* part II.B.3.b. for a discussion of why the ultimate execution of that order was the exercise of the Judges’ judicial authority, not administrative.)

Had the parties arrived at a negotiated agreement that never escalated into the execution of binding judicial orders, the only exercise of the Judges’ authority would have remained administrative—and Clerk Andrews would continue to comply with those terms by agreement. However, the Judges’ conduct transitioned from the exercise of administrative authority to the exercise of judicial authority on May 4, 2022—when they executed and journalized a binding Journal Entry that directed the Clerk’s conduct after making factual and legal conclusions about the reasons for their order—and noting they would utilize the court’s contempt powers and other available means to secure the Entry’s enforcement.

b. The Respondents’ May 4 Journal Entry is the only exercise of judicial authority in this case that also pertains to Clerk Andrews’ claims.

Clerk Andrews asserts that all Respondents participated in the issuance of the May 4, 2022 Journal Entry, and she challenges their authority and the scope of their efforts to do so. (Am. Compl., ¶¶ 2-4, 45-54, 58-59, 61-65, 69-76, 78-81.) This is the only instance of judicial authority in this case that also has any relevance to Clerk Andrews’ allegations—and, applying the four-part

test from *Fiser*, 164 Ohio St.3d 1, at ¶ 11-17, its status as an exercise of judicial authority is clear:

- (1) Do the orders/exercise of authority facilitate the administration of the court’s “own business” (administrative) or are they made in the context of a dispute between the court and outside parties (judicial)?**

Both. The Entry of May 4 addressed the effects of the Clerk’s separate elected office’s impact on the operations of the Court. It issued an order that directed the portions of that office that adversely affected the Court’s operations, and expressly declined to direct the remaining portions that did not. (Am. Compl., Ex. I, ¶¶ 9, 94-138.)

- (2) If the exercise of authority relates to the appropriation of funds, is that appropriation coming from the court’s own funds (administrative) or others’ funds (judicial)?**

The latter. To ensure uninterrupted access to court records and that the Common Pleas Court’s operations would not be hindered by the Clerk retaliating against the Court in response to the May 4 Entry, the Court directed the Clerk to continue contributing her established financial share for the hardware and software that supply their shared systems. These directives did nothing more than maintain the *status quo* regarding the Clerk’s maintenance of court records and technology facilitating that maintenance, and the Clerk’s own Complaint references her contractual obligations for these resources to third-party vendors; however, in the absence of this directive, the Court articulated its concerns for her retaliatory withdrawal of these resources. (Am. Compl., Ex. I, ¶¶ 124-131.)

- (3) Did the judge exercise judicial review of a matter—*e.g.*, did it determine a controversy between adverse parties by ascertaining facts, applying law to facts, and rendering a judgment?**

Yes. The Entry was a 26-page summary of the Court’s identification of a long-standing concern it identified regarding the minimum staff and operational supports it needed within the legal division of the Clerk’s office (Am. Compl., Ex. I, ¶¶ 50-59) and with their shared Courts IT staff (Am. Compl., Ex. I, ¶¶ 60) that it had endeavored to resolve through the exercise of its administrative authority (Am. Compl., Ex. I, ¶¶ 84-92), but failing those efforts, it had opted to escalate its requests and informal attempts into this judicial order. (Am. Compl., Ex. I, ¶¶ 94, 99.)

That Entry summarized a series of facts the Judges concluded from interviews with the Clerk’s legal division staff, statements of current and former deputy clerks from the legal division, and the direct observation of the Common Pleas Court’s judges and their staff. (Am. Compl., Ex. I, ¶ 21.)

The Entry likewise applied a series of law to these facts throughout, and rendered a judgment it deemed necessary, reasonable, and the least onerous measures reasonably calculated to preserve the effective and efficient functioning of the Common Pleas Court. (Am. Compl., Ex. I, ¶ 99.)

This culminated in a series of directives that it issued in a final judgment that had no expiration. (Am. Compl., Ex. I, ¶¶ 100-131, 134.)

(4) Did the judge threaten to hold anyone who violated his or her entry in contempt, or otherwise threaten to compel obedience to a court order?

Yes. It likewise outlined mechanisms to enforce violations of those directives, including contempt proceedings. (Am. Compl., Ex. I, ¶¶ 132-137.)

c. The Common Pleas Court’s approval of the Prosecutor and Commissioners’ Joint Application to appoint outside counsel for the Clerk amounted to the exercise of judicial authority; however, it has no relevance to or place in this matter’s review.

Finally, Clerk Andrews asserts that, following an application and hearing, two of the seven Respondent Judges executed and journalized an Order in *In re: Joint Application of the Lake County Prosecuting Attorney and the Lake County Board of Commissioners, Pursuant to R.C. 305.14(A), to Employ Legal Counsel to Advise and Represent Lake County Clerk of Courts, Faith Andrews*, on April 11, 2022. (Am. Compl., ¶¶ 35-38, Ex. H, ¶ 1.)

This Order—and the application that preceded it—was the result of the Lake County Commissioners and Lake County Prosecutor’s joint application to appoint outside counsel for Clerk Andrews pursuant to R.C. 305.14, which must be pursued and approved by the Common Pleas Court to bypass the Prosecutor’s typical role as the Clerk’s legal representative under R.C. 309.09. Following a hearing, Clerk Andrews asserts that two of the seven Respondent Judges ruled on this application, approving the request (Am. Compl., Ex. H, ¶ 1.), notwithstanding Clerk Andrews’ assertion they had an “obvious conflict of interest,” because they had engaged in the above informal efforts to address her misconduct. (Am. Compl., ¶ 16.)

First, as echoed within the Order granting the application, the Clerk’s claims of a controversy between herself and the Judges was inaccurate: The Prosecutor and County jointly sought to appoint outside counsel for the Clerk because the County received a letter on March 2,

2022, alerting them to the fact that multiple deputy clerks intended to pursue litigation against the Clerk, alleging a hostile workplace. The Prosecutor indicated he may not be able to simultaneously defend claims by these deputy clerks that could potentially be levied against the Clerk (as their appointing authority), the County (as the Clerk's funding authority), and the Court (as an entity with authority to direct the Clerk). (Am. Compl., Ex. H, ¶¶ 8, 10-13.) Following the Court learning of these claims, it resumed further informal discussion with the Clerk about her conduct and provided her the draft entry of March 3, 2022, to address her conduct. *Id.*

Any intervention from the Court to address the Clerk's alleged misconduct fails to amount to a conflict between the Court and Clerk (*see* part II.C.2., *infra*); further, if the Clerk disagreed, she and her counsel had the adequate remedy at law via R.C. 2701.03 to pursue an Affidavit of Disqualification. Clerk Andrews not only fails to allege she pursued this procedure, but she asserts, and her attachments demonstrate, that the Court approved the application in full. (Am. Compl., Ex. H.) *See also State ex rel. O'Diam v. Greene Cty Bd. of Comm'rs*, 161 Ohio St.3d 242, 2020-Ohio-3503, 162 N.E.3d 740, ¶¶ 28, 31-32 (completing claims do not rise to a conflict in the appointment of outside counsel, nor does it preclude the procedure in 305.14 operating properly).

Clerk Andrews further fails to allege any facts to suggest the Court acted without jurisdiction to support a claim in prohibition; she likewise fails to allege an appeal followed the Court's Order, notwithstanding its availability. Finally, she fails to identify any determination within the Court's Order that the law enjoins as a duty resulting from the Judges' office that could potentially warrant revision in *mandamus*. This Order therefore contains nothing meriting this Court's review in this action.

C. CLERK ANDREWS HAS NOT ARTICULATED A VIABLE PROHIBITION CLAIM.

Clerk Andrews seeks a writ of prohibition, precluding the Common Pleas Court "from

enforcing any term, directive, or order” in its “Improper Journal Entries...including, but not limited to, the journalized May 4 order, and to prevent Respondents from exercising judicial power in connection with any of them.” (Am. Comp., Relief Requested, ¶ 2.) She likewise seeks a writ of prohibition to preclude the Common Pleas Court from further efforts to “constructively remove [her] from her elected office without due process nor complying with the statutory recall process under Ohio law, or to take from her the rights, duties, and emoluments of her elected office without due process.” (*Id.* at ¶ 3.) In support, she asserts the Common Pleas Court “lack[s] any jurisdiction whatsoever to journalize or enforce the false and defamatory Improper Journal Entries, including, but not limited to, the May 4 Order.” (Am. Comp., ¶ 75.) These allegations fail to support a viable claim as a matter of law.

Importantly, a writ of prohibition is a supervisory writ—not a revisory writ—that is not available to either preempt or remedy an erroneous judgment. *State ex rel. Niederlehner v. Mack*, 125 Ohio St. 559, 564-65, 182 N.E. 498 (1932). Instead, actions in prohibition “solely and only” exist to test and determine the subject-matter jurisdiction of the inferior tribunal to proceed. *Eaton Corp.*, 40 Ohio St.3d at 409, quoting *State ex rel. Staton v. Common Pleas Court*, 5 Ohio St.2d 17, 21, 213 N.E.2d 164 (1965). Unless the acting tribunal is proceeding with a “patent and unambiguous” lack of jurisdiction—even if they will allegedly exercise that jurisdiction excessively or improperly—prohibition is unavailable; its purpose is neither to prevent or correct an erroneous decision. *Eaton Corp.*, 40 Ohio St.3d at 409, citing *State ex rel. Winnefeld v. Common Pleas Court*, 159 Ohio St. 225, 112 N.E.2d 27 (1953); *State ex rel. Goldstein v. Christiansen*, 70 Ohio St.3d 232, 234, 1994 Ohio 229, 638 N.E.2d 541 (1994).

Put another way, a writ of prohibition may not be used to question or modify parts of an order. So long as an order proceeds with some subject matter jurisdiction, prohibition is not an

appropriate remedy, even if that order is allegedly overbroad or erroneous. As a result, a “writ of prohibition is an extraordinary remedy that is granted in limited circumstances with great caution and restraint.” *Ohio High Sch. Ath. Ass'n v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, 438, ¶6, citing *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15, 740 N.E.2d 265. “In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal.” *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶5.

- 1. Clerk Andrews’ pursuit of a writ of prohibition improperly seeks to restrict the purely administrative exercise of the Judges’ authority that preceded the judicial action of their May 4 Entry. Even to the extent prohibition could have otherwise preempted those efforts, the Judges’ subsequent journalization of their Entry requires the denial of these claims as moot.**

Clerk Andrews initially brought this action on April 18, 2022, before the Common Pleas Court took any judicial action; her initial Complaint expressly sought to preempt the Court’s exercise of judicial action before it ultimately acted for the first time in issuing its Journal Entry of May 4, 2022 in *In re: Direction to the Clerk of the Court of Common Pleas in the Performance of the Clerk’s Official Duties*, Lake County Court of Common Pleas, Case No. 22AA000001. At that time, she alleged the Common Pleas Court had only engaged in the informal discussions and provisions of draft entries; these amounted to the exclusive exercise of the Judges’ *administrative* authority (*see* part II.B.3.a.) which are not redressable in prohibition. *See* part II.B.1.

Even to the extent these administrative efforts evidenced the Judges’ potential to prospectively exercise judicial action, which might otherwise satisfy the first element of a claim of prohibition (*i.e.*, that Respondents were about to exercise judicial power), they subsequently signed, filed, and journalized their Entry of May 4, 2022—an unequivocally judicial exercise of

authority. *See* part II.B.3.b. This rendered those events moot: “When the action a writ of prohibition seeks to prevent has been completed, the claim for the writ becomes moot.” *State ex rel. Hazel v. Bender*, 10th Dist. No. 10AP-435, 2011-Ohio-1027, ¶ 11 (*citing Gatto v. Falvey*, 5th Dist. No. 2009 CA 0184, 2009-Ohio-4996). The only exception exists when a court acted with a patent and unambiguous lack of subject matter jurisdiction. *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4105, 832 N.E.2d 1202, ¶ 9 (*citing State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003 Ohio 1630, 786 N.E.2d 39, ¶ 8, *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002 Ohio 4907, 775 N.E.2d 522, ¶ 18).

The Common Pleas Court had ample authority and jurisdiction to issue orders to direct the Clerk in the performance of her duties (*see* part II.C.2.); it was authorized to determine the propriety and extent of its jurisdiction—and any challenge the Clerk wished to raise about the Common Pleas Court’s precise scope and exercise of that jurisdiction is therefore limited to appeal.

- 2. The Common Pleas Court and its Judges do not patently and unambiguously lack jurisdiction to direct the Clerk’s operations as they relate to the performance of her duties affecting the Court’s records and operations. Therefore, Clerk Andrews cannot establish the elements to pursue a writ of prohibition as a matter of law.**

Clerk Andrews’ prohibition action amounts to a makeshift appeal of the May 4 Entry, asking this Court to preclude its enforcement and/or to prevent the Common Pleas Court and its Judges from exercising any judicial power in connection with that Entry or any other term, directive, or order within it—or even the draft Entries it previously provided her. This is neither a proper use of the prohibition remedy, nor is it even within the scope of what a proper prohibition review would entail:

An action in prohibition is never tasked with determining whether the trial court’s determination was correct, or essentially “blue penciling” that Entry. Rather, in a prohibition

matter, the Court is only tasked with determining whether the underlying court was about to enter into a judicial act where its general jurisdiction was patently and unambiguously lacking. *State ex rel. Toma v. Corrigan*, 92 Ohio St.3d 589, 593-594, 2001-Ohio-1289, 752 N.E.2d 281 (“we need not expressly rule on the merits of his claims because our review is limited to whether...jurisdiction is patently and unambiguously lacking.”); *see also Goldstein*, 70 Ohio St.3d at 238 (Where jurisdiction turns upon some fact to be determined by the trial court, “its ruling that it has jurisdiction, if wrong, is simply error for which prohibition is not the proper remedy.”) Where the lower court had general subject-matter jurisdiction, prohibition is improper and the party contesting the court’s jurisdiction has an adequate remedy via appeal. *Id.*; *State ex rel. Suburban Construction Co. v. Skok*, 85 Ohio St.3d 645, 647 (1999).

Here, Clerk Andrews has failed to allege facts demonstrating that the Common Pleas Court acted with the unequivocal, patent, unambiguous absence of jurisdiction to proceed as they did—nor could she. This is because the Common Pleas issued an Entry directing the Clerk’s conduct with respect to matters where it had specific, verifiable authority to do so:

Ohio County Clerks of Court are “creature[s] of statute,” established pursuant to R.C. 2303.01.⁷ *State ex rel. Ware v. Kurt*, S.Ct. Case No. 2021-0823, 2022-Ohio-1627, ¶ 53 (dissent). In that regard, Clerks’ authority is limited to what is provided by statute, and they lack discretion to disregard statutory mandates. *State ex rel. Bey v. Byrd*, 160 Ohio St.3d 141, 154 N.E. 3d 57, 2020-Ohio-2766, ¶ 30 (dissent), *citing Euclid v. Camp Wise Ass’n*, 102 Ohio St. 207, 210, 131

⁷ Prior to its repeal on November 7, 1933, Ohio Constitution Art. IV, § 16 likewise provided for the election of a Clerk of Courts in each County. *See also State ex rel. Struble v. Myers*, 132 Ohio St. 206, 206, 6 N.E.2d 1, 7 Ohio Op. 380 (1937). However, at all times relevant to this action—and since 1933—Clerks have existed exclusively pursuant to statute. This Court both recognized and disregarded that Clerks held Constitutionally-created offices nearly a century ago, instead characterizing them exclusively as “creatures of statute,” in its most recent opinions. *See Ware*, 2022-Ohio-1627, at ¶ 53.

N.E. 349, 19 Ohio L. Rep. 14 (1921)(“If the Legislature had the power to create, it had the power to destroy, and the power to destroy includes the power to burden or regulate or to impose conditions or restrictions as its judgment shall dictate”).

The Clerk’s duties are largely defined by statute, although they potentially have additional obligations pursuant to common law. *See* R.C. 2303.26 (the Clerk “shall exercise the powers conferred and perform the duties enjoined upon the clerk by statute and by the common law.”) The Clerk’s duties, and her authority in discharging those duties, fall into two categories:

The Clerk’s predominant responsibilities arise within its *legal division*—*i.e.*, the office’s powers and duties that support the courts. *See* R.C. 2303.07, 2303.08, 2303.09, 2303.10, 2303.11, 2303.12, 2303.13, 2303.14, 2303.15, 2303.16, 2303.17, 2303.18, 2303.19, 2303.20, 2303.201, 2303.21, 2303.22, 2303.23, 2303.26, 2303.27, 2303.28, Sup.R. 26, 34, 44, 45, 46, and 47. These duties include, but are not limited to, administering oaths and certifying court documents; filing court papers and journalizing decisions and orders of the courts; maintaining an appearance docket, trial docket, journal, and execution docket; maintaining an index of judgments and suits; and preserving and maintaining the courts’ records in a manner that ensures the public’s access to those records. R.C. 2303.05 empowers the Clerk to appoint and employ the necessary deputies, assistants, clerks, bookkeepers, and other employees to support these functions.

The Clerk’s few responsibilities that do not fall within its *legal division* pertain to maintaining a *title division* that oversees the issuance of watercraft, motor vehicle, and manufactured home titles pursuant to R.C. Chapter 1548, R.C. Chapter 4505, and R.C. 2303.29, and *U.S. passport acceptance*—accepting U.S. passport applications and administering oaths and affirmations in connection with those applications under 22 U.S.C. 213 and 22 C.F.R. 51.22(b)(2).

- a. **The Ohio Constitution, the legislature, and this Court define the Clerk’s role in supporting the courts as lacking *any* independent**

authority or autonomy in performing their court functions—those are exclusively and entirely controlled by the Common Pleas Court.

While the Clerk is a “creature of statute,” the Ohio Constitution created this Court, its Courts of Appeal, and its Common Pleas Courts (including all divisions thereof) in Article IV, §01, vesting them with the judicial power of the state. The Ohio Constitution charges all divisions of the Common Pleas Courts with providing the fair, impartial, speedy, and sure administration of justice. Ohio Const., Art. IV, § 04.

Clerks are not courts, nor are they judicial officers who have authority to exercise judicial power. *Ware*, 2022-Ohio-1627, at ¶ 55 (dissent, citing *State ex rel. Glass v. Chapman*, 67 Ohio St. 1, 65 N.E. 154 (1902), syll.; *Mellinger v. Mellinger*, 73 Ohio St. 221, 227, 76 N.E. 615, 3 Ohio L. Rep. 536 (1906); *Hocking Valley Ry. Co. v. Cluster Coal & Feed Co.*, 97 Ohio St. 140, 141-142, 119 N.E. 207 (1918)). This Court has described the Clerk’s authority in performing her duties as “ministerial and nonjudicial,” “clerical,” and “without the exercise of discretion or judicial power.” *Id.*; see also *Byrd*, 2020-Ohio-2766, ¶ 31 (dissent). This Court has emphasized that the Clerk’s role exists “only [as] an arm of the court for *** performing *** duties which the court itself might perform. [Her] services are employed only for the more convenient performance of the functions of the court [that] are clerical in nature,” and [she] “is vested with no discretion in any respect.” *McKean v. Graves*, 91 Ohio St. 23, 24, 109 N.E. 528 (1914); *Glass*, 67 Ohio St. at 1.

Importantly—and central to this Court’s review—the Clerk’s subordinate supporting role to the courts and her obligations in fulfilling her office’s legal division duties under the Court’s express direction are codified in R.C. 2303.26: “The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon the clerk by statute and by the common law; and ***in the performance of official duties the clerk shall be under the direction of the court.***” The legislature expressly made the Clerk’s performance of her duties subject to the

absolute and exclusive direction of the Common Pleas Court. *Byrd*, 2020-Ohio-2766, ¶ 45 (dissent). While this Court has a variety of authority over the state’s subordinate courts, its authority over the Clerk of Courts is limited to defining case management and procedural standards—and the Clerk’s remaining duties are exclusively directed by the Common Pleas Court:

And while the clerk may act under the direction of the common pleas court, R.C. 2303.26, this court [*i.e.*, the Supreme Court] has no power over the clerk. Ours is not a unified court system in which separately run courts are consolidated into one centrally managed court system. And not even the common pleas court, which has the power to direct the work of the court, has authority to compel the clerk to disobey the statute.

Byrd, 2020-Ohio-2766, ¶ 45 (dissent).

b. The Ohio Constitution, the legislature, and this Court unequivocally define the offices, authority, and duties of the Common Pleas Court and its judges as empowered to direct the functions of the Clerk that affect court operations and records.

Beyond what the legislature has provided in R.C. 2303.26, the Common Pleas Court’s authority over the Clerk—as well as other officeholders whose exercise of authority has the potential to affect the operation of and access to the courts—has been discussed at length in over a century of case law. This authority has likewise concluded that the Common Pleas Court possesses inherent authority out of its Constitutional role to direct the Clerk in the oversight of her functions that support the Court:

Since at least 1896, this Court has recognized that courts possess inherent powers to effectuate an orderly and efficient administration of justice, beyond the financial and procedural standards established by the General Assembly. In a proceeding in *mandamus* to compel the Clerk to obey a court order pertaining to its legal division functions, this Court held the Clerk could not challenge the validity of the order, nor the authority and jurisdiction of the court that made it. *Glass*, 67 Ohio St. at 1; *McKean*, 91 Ohio St. at 24. This is because the functions the Clerk is

elected and authorized to perform occur pursuant to the authority, oversight, and direction of the courts those functions exclusively support. The Clerk remains under the direction of the Common Pleas Court and must obey all orders pertaining to its performance of those duties, regardless of holding a separately elected office.

For example, in 2003 Ohio Atty. Gen. Ops. 2003-030, the Attorney General defined the relative authority of the Common Pleas Court and the Clerk regarding the maintenance and release of court records. (This inquiry arose over a dispute between the Domestic Relations Division and the Clerk over whether it could place both General and DR Division records online, or whether the DR Division could direct the Clerk to remove entries in its cases from being accessed electronically.) The Attorney General concluded the Clerk was obligated to obey the Court's order unless a court of competent jurisdiction reversed the order or prohibited its enforcement. This is because "[t]he clerk makes and has custody of the court's records***." *State v. Wilson*, 102 Ohio App.3d 467, 471, 657 N.E.2d 518 (2nd Dist. 1995). However, it concluded that, in doing so, the Clerk "remains a mere arm of the court, doing what the court would otherwise do, and it has no discretion in the performance of these duties." *Id.*

This Court has clarified that a court has general custody of and authority over its own records and files, which "extends to the files of all cases which have ever been instituted therein, whether dismissed, disposed of, or pending. This power of the court is inherent and takes precedence even of [sic] the statutory power of a clerk over court records and files." *Ex parte Thayer*, 114 Ohio St. 194, 201, 150 N.E. 735 (1926), syll. *See also* Ohio Atty. Gen. Ops. 1973-091; 1989-073; 2003-030, 2006-011.

This inherent authority doesn't extend only to courts' authority over Clerks. It empowers courts to issue orders that direct other elected officeholders to exercise their authority in a manner

that does not interfere with the operation of and access to the courts. *State ex rel. Johnston v. Taulbee*, 66 Ohio St.2d 417, 420-421, 423 N.E.2d 80 (1981), *citing Zangerle*, 141 Ohio St. 70; *State ex rel. Lorig v. Clark Cty. Bd. of Commrs.*, 52 Ohio St.2d 70, 369 N.E.2d 1046 (1977); *Edwards*, 48 Ohio St.2d at 305; *State ex rel. Foster v. Lucas Cty. Bd. of Commrs.*, 16 Ohio St.2d 89, 242 N.E.2d 884 (1968); *Hale v. State*, 55 Ohio St. 210, 213-214, 45 N.E. 199 (1896).⁸

c. The Common Pleas Court’s authority to direct the Clerk in the performance of her official duties, as well as its inherent authority to exert control over the Clerk relating to court records and files, particularly empowers it to issue orders that bind the Clerk when it regards her conduct as placing the maintenance and access of its records—and, by extension, the confidence and continuity of its own operations—in jeopardy.

The typical exercise of direction and control exerted by the Common Pleas Courts over Clerks within R.C. 2303.26 relates to the pedestrian exercise of the Clerk’s duties. For example:

- Ordinarily, the Revised Code requires Clerks to collect filing fees and costs in Domestic Relations matters. However, a DR Court’s local rule instructed the Clerk to waive prepayment of a filing fee with the provision of an indigency affidavit. The Clerk challenged this, as well as the Court’s order to pay filing fees that would ordinarily be the party’s obligation, claiming nothing in the Revised Code authorized the Clerk to do this. The Court held “in the absence of a specific statute authorizing [the Clerk] to pay a private publisher for service by publication, the trial court’s order for him to do so compels the clerk to perform an act he has no authority to do. However, we find that the provisions of R.C. 2303.26 are sufficient to confer just such authority upon the clerk.” (*Torres v. Torres*, 4 Ohio App. 3d 224, 228, 447 N.E.2d 1318 (8th Dist., Aug. 26, 1982).)⁹

⁸ As this Court noted in *O’Diam*, 161 Ohio St. 3d 242, at ¶¶ 17-29, this inherent authority is not absolute—it does not empower courts to bypass Constitutionally sound statutory requirements in the name of their inherent authority. However, here, there are no statutory prerequisites preceding the Common Pleas Court’s ability to direct the performance of the Clerk’s duties. To the contrary, the Revised Code expressly authorizes the Court to do so within R.C. 2303.26.

⁹ With respect to courts’ inherent authority to obligate other elected officials when needed to fulfill the fair and effective administration of justice (*see part II.C.2., supra*), the *Torres* Court likewise cited examples where the Court could properly order indigent litigants’ expenses to be paid by the County, as well as the Clerk. (*Id.*, *citing Anderson v. Jacobs*, 68 Ohio St. 2d 67, 22 O.O.3d 268 (1981); *State, ex rel. Heller, v. Miller*, 61 Ohio St. 2d 6, 15 O.O.3d 3 (1980); *State v. Arrington*, 42 Ohio St. 2d 114, 71 O.O.2d 81(1975).)

- By statute, the Clerk is obligated to charge \$2.00 for every subpoena issued under R.C. 2303.20(D), and it cannot issue a writ to serve a subpoena until sufficient funds have been deposited to cover the costs, witness fees and mileage charges pursuant to R.C. 2303.16. However, because the Clerk is under the Court’s direction under R.C. 2303.26, if the Court promulgates a local rule that requires the Clerk to waive this deposit upon proof the person requesting the subpoena is indigent, the Clerk is obligated to comply with this directive. *Kreuzer v. Kreuzer*, 2nd Dist. App. No. 00CA43, 2001 Ohio App. LEXIS 2001, *6-7 (May 4, 2001).
- A Common Pleas Court’s local rule empowered the Clerk to refuse to accept any case that omitted a Case Designation Form. However, because no other provision in the local rules allowed the Clerk to refuse to accept a manually filed complaint for any other reason, and no other law allowed the Clerk to refuse to file it, the Clerk was not authorized by law or Court rule to refuse a Complaint for filing—particularly given the Clerk’s complete lack of discretion in the exercise of her duties. (*Jones v. University Hosps. Of Cleveland*, 124 N.E.3d 390, 8th Dist. App. No 106836, 2018-Ohio-4704, ¶¶ 20-23)
- The Revised Code obligates the Clerk to enter all orders, decrees, judgments, and proceedings, and it is directed to keep a journal. The statutes do not specify the procedure by which the Clerk will complete these functions, “[s]o far as these statutes are concerned, it is entirely discretionary with the Court as to the procedure chosen to insure the accuracy of the entries into the journal by the Clerk***.[T]he broad discretion of the Court in the selection of the procedure for the journalization of a judgment,” is restricted only by what the statute provides. (*Foglio v. Alvis*, 1957 Ohio Misc. LEXIS 342,*13, 143 N.E.2d 641 (Franklin County 1957).
- Ohio Sup.R. 7(A) requires a maximum time limitation of 30 days within which a judgment entry must be filed and journalized. A Common Pleas Court’s Local Rules that required the Clerk to journalize judgments within a smaller number of days was within its authority under R.C. 2303.26. The Court’s only restriction was to abstain from contradicting Sup.R. 7(A) in permitting journalization to occur *outside* 30 days. 2006 Ohio Atty Gen. Ops. No. 2006-11.
- The Treasurer’s argument that money held by the Clerk should have been forfeited to the State, without further motion or notice, fails because the Clerk only acts under the direction of the Court and therefore required a Court order to transfer the funds. (*Treasurer v. Scott*, 1st Dist. App. No. C-200438, 2022-Ohio-1467, ¶ 12.)
- A Common Pleas Court ordered a Clerk to issue a certificate of judgment, which the Clerk was obligated to prepare in a different form than the prevailing party had requested, and as the Common Pleas Court had directed pursuant to R.C. 2303.26 (*State ex rel. Bitter v. Missig*, 72 Ohio St.3d 249, 1995-Ohio-147, 648 N.E.2d 1355)
- A Clerk of Courts is under the direction of the Common Pleas Clerk in the exercise of her duties pursuant to R.C. 2303.26. Therefore, when the Clerk and her staff perform those

duties at the judges' direction, they inherit the judges' absolute immunity from common law claims against them. (*Baker v. Court of Common Pleas*, 8th Dist. No. 54968, 61 Ohio App.3d 59, 65 (Feb. 14, 1989).)

While the Clerk performs her legal division duties without any independent discretion and these tasks are ministerial in nature, they are centrally important to the operation of the courts she serves: She maintains custody and oversight over the courts' most valuable resources—the case records that document all of its judicial operations. Beyond this, the Clerk has responsibility to ensure those records are accurately and efficiently maintained—which drives the public's confidence in the integrity and accuracy of those records and the Court's need for reliable, accessible records. Further, the Clerk is responsible for ensuring the courts and the public have uninterrupted, predictable access to case records; this is perhaps the most important responsibility that is invested in the office. If the Clerk fails to protect the security, accuracy, or access to court records, the entire judicial branch's services would be dramatically hindered and fall into a state of chaos.

Putting these authorities together, it is clear the Common Pleas Court—which maintains authority to direct the Clerk in how to perform the duties of her office, provided it does not contradict any statute or Superintendence Rule—likewise has authority to direct the location and manner in which the Clerk performs those duties. This is true at any time, but particularly where—as here—the Common Pleas Court has cited a significant risk of operational disruptions within the Clerk's office placing the courts' and public's access to its records in jeopardy.

The Common Pleas Court issued its Entry of May 4, 2022 in *In re: Direction to the Clerk of the Court of Common Pleas in the Performance of the Clerk's Official Duties*, Lake County Case No. 2022AA000001 with proper subject matter jurisdiction pursuant to both its authority to direct the Clerk under R.C. 2303.26 and its inherent authority under the Ohio Constitution and common law. **This is all that is required to deny a petition for a writ of prohibition.** If the

Entry occurred with some subject matter jurisdiction, Clerk Andrews fails to state a claim for prohibition, even if she had a basis to challenge the substance or scope of the Common Pleas Court's Entry. Prohibition—which is only available for judicial actions—is only reserved for judicial acts that are about to proceed or have proceeded without any proper subject matter jurisdiction. That is not the case here, as an abundance of authority above demonstrates. When a judicial act proceeds with some jurisdiction—even if improperly (*i.e.*, if an order exceeds its jurisdiction or authority in some manner)—that is exclusively a determination for the court of appeals. While, incidentally, the Court's Entry *was* both jurisdictionally and substantively proper (*see* part II.D.2., *infra*), the mere determination that a court has subject matter jurisdiction to direct the conduct of a Clerk of Courts is all that's required to dismiss an action in prohibition.

- d. The Common Pleas Court's proposal of voluntary standards of conduct are not judicial conduct that a writ of prohibition could address in any event. However, the Court is unequivocally authorized to direct the Clerk in the performance of her official duties and to exert control over the Clerk relating to court records and files; it may exercise this authority to bind the Clerk in a series of circumstances, especially when it regards her conduct as placing the maintenance and access of its records—and, by extension, the confidence and continuity of its own operations—in jeopardy.**

The Court's first and only order or judgment that is implicated by the Clerk's claims occurred in its Entry of May 4. *See* part II.B.3.b., *supra*. The months of informal discussions and disagreements with the Clerk about their shared operations—including the Judges' attempts to negotiate conditions with her agreement, and its provision of draft orders it indicated it would otherwise journalize if she declined—amounted only to the exercise of their administrative authority (*see* part II.B.3.a.), which are not redressable in prohibition (*see* part II.B.1.)—although they are squarely within the Court's authority and jurisdiction in any event. *See* part II.C.2.

For all the reasons the Common Pleas Court ultimately had the authority to order the

Clerk’s behavior comply with its Entry of May 4, its exercise of administrative authority in proposing the Clerk voluntarily agree to engage in the same behaviors before they issued a binding order was within the Court’s authority and jurisdiction. These events are therefore improperly reviewed in a writ of prohibition—which is only permitted to halt a *judicial* act (not an administrative one) that is about to occur outside a court’s jurisdiction (which is not the case here).

3. Clerk Andrews likewise cannot state a claim for a writ of prohibition because of her adequate remedies at law.

In addition to Clerk Andrews’ claim in prohibition failing because her claims are moot and there is no basis to conclude the Common Pleas Court patently and unambiguously lacked jurisdiction to proceed, her Complaint likewise fails because of the variety of adequate remedies at law. However, because this preclusion to her prohibition claim likewise precludes her claims in *mandamus* and *quo warranto*, this is addressed as to all claims in part II.D.3., *infra*.

D. CLERK ANDREWS HAS NOT ARTICULATED A VIABLE CLAIM IN MANDAMUS.

Clerk Andrews likewise seeks a writ of *mandamus*, ordering the Common Pleas Court to vacate its May 4 Entry, as well as the earlier draft entries it provided her but never journalized. Her claims fail for a series of reasons:

1. Clerk Andrews’ requested relief is not appropriate in *mandamus*.

- a. The May 4, 2022 Entry—a judicial act that is not redressable in *mandamus*—was only preceded by exercises of administrative authority that were both mooted by the Entry and which never met the threshold to be reviewed in *mandamus*.**

Clerk Andrews’ petition for a writ of *mandamus* seeks to order the Common Pleas judges to vacate their “Improper Journal Entries” (which she describes as the journalized May 4 Entry and the informal drafts provided to her but never filed or journalized). (Am. Compl., ¶¶ 1, 5, 58.)

A writ of *mandamus* compels action or commands the performance of a duty, while a

decree of injunction ordinarily restrains or forbids the performance of a specified act. *State, ex rel. Smith*, 139 Ohio St. 303, at ¶ 2. An order in *mandamus* commands the performance of an act “that the law specially enjoins as a duty resulting from an office.” R.C. 2731.01. That is, an order in *mandamus* would instruct the Common Pleas Court and its Judges to *do* something—it is neither preemptive nor preventive in nature—and that “something” must satisfy a clear legal duty.

As explained in part II.C.2., while the Court has extensive authority to direct the Clerk, the only Entry in which it did so—and the only binding order of the Common Pleas Court it would have any ability to vacate—was the one it executed, filed, and had the Clerk journalize on May 4, 2022. That Entry is a judicial order (*see* part II.B.3.b.) that is inappropriately reviewed in *mandamus* in any event (*see* part II.B.1.; II.D.1.b.) However, *vacatur* of that Entry, which the Judges issued with proper authority and jurisdiction, and which the Judges are under no “clear legal duty” to vacate, is neither a viable remedy in prohibition or *mandamus*. *See* part II.B.2.c.

Additionally, Clerk Andrews’ request to preempt, strike, or declare *draft* Entries invalid is effectively a request to prospectively restrain the Common Pleas Court’s oversight over her performance of her duties—which is a request for an injunction this Court lacks original jurisdiction to grant, not a request for an order in *mandamus*. *State, ex rel. Pressley, v. Indus. Comm.*, 11 Ohio St. 2d 141, 228 N.E.2d 631, ¶ 4, syll. (1967).

Finally, any effort to challenge or seek *vacatur* of the informal drafts that preceded the May 4 Entry would be improper and premature; the Judges’ alleged exercise of administrative authority never ripened into a controversy that could be ripe for review: They never issued an administrative order that could be challenged in an action for injunctive or declaratory relief; that provided the Judges with the ability to utilize the Common Pleas Court’s contempt powers; or that they could compel the Clerk’s compliance through their own action in *mandamus*. *See* part II.B.2.; *State ex*

rel. Elyria Foundry Co. v. Indus. Comm, 82 Ohio St.3d 88, 89, 1998-Ohio-366, 694 N.E.2d 459 (finding abstract, hypothetical, and premature conflicts may not be reviewed in *mandamus*).

b. The May 4, 2022 Entry is the only judicial or administrative order of the Common Pleas Court; as an exercise of judicial authority, it is inappropriate for *mandamus* review.

Further, the only Entry that has risen to the level of a Court action—the May 4, 2022 Entry—is improper for *mandamus* review because it is a judicial order—and because the court did not lack authority or jurisdiction to render it. *See* parts II.B.1. and II.B.2.c.; *see also Ballard*, 50 Ohio St.3d at 184; *Ney*, 33 Ohio St.3d at 119. For all the reasons articulated in part II.C.2., the Common Pleas Court and its Judges have jurisdiction to direct the Clerk’s operations as they affect the functions that are inextricably intertwined with the Court’s records and operations. This jurisdiction is expressly provided within R.C. 2303.26, as well as consistently reiterated in Ohio law as part of the Court’s inherent authority.

2. Clerk Andrews has no clear legal right to the requested relief, nor does the Common Pleas Court have a clear legal duty to provide the relief she requests.

Clerk Andrews is not entitled to a writ of *mandamus* because she has no clear legal right to override the Common Pleas Court’s authority it appropriately exercised pursuant to both R.C. 2303.26, as well as its inherent authority within the Ohio Constitution and Ohio case law, to “direct the performance of [her] official duties.” Further, the Common Pleas Court has no clear legal duty to provide Clerk Andrews the relief she seeks—*i.e.*, vacating its Entry.

a. The only question in considering *mandamus* instead of appeal is whether the Entry proceeded with some jurisdiction.

In issuing its Entry of May 4, the Common Pleas Court determined that Clerk Andrews obstructed its ability to carry out her office’s basic purposes and functions and placed the Common Pleas Court’s entire operations in jeopardy. The Common Pleas Court has both the statutory and

inherent power to issue and enforce orders preventing others, particularly those statutorily subject to their direction, from interfering with the viability of its essential functions. As relayed in part II.C.2., the Common Pleas Court clearly had sufficient jurisdiction to direct Clerk Andrews to perform her duties in a manner as the Court directed, which is the only requirement to set aside the applicability of a *mandamus* remedy. This is all that's required to demonstrate Clerk Andrews has no legal right to interfere with those basic functions or be free from contempt for violations of orders that seek to protect those basic functions.

If Clerk Andrews fails to comply with the Common Pleas Court's Entry of May 4, the Court has the ability to exercise its statutory and inherent powers to set a show cause hearing and consider the existence of contempt,¹⁰ where she may challenge the reasonableness of the Entry itself, and she may likewise appeal. However, because the Common Pleas Court acted with jurisdiction, any substantive review of its Entry may not be evaluated in *mandamus*.

- b. Even if this Court contemplated the granular details of the Court's Entry, it clearly proceeded with proper jurisdiction, and it exclusively addressed the matters within its statutory and inherent authority to control.**

This Court need only conclude the Common Pleas Court's jurisdiction was proper to determine that *mandamus* and prohibition relief are inappropriate. It is not obligated to review the

¹⁰ R.C. 2705.02 defines a judge's contempt powers. A person may be punished for contempt for, "[d]isobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer. R.C. 2705.02(A). Additionally, this Court has affirmed courts' inherent power of contempt, holding, "[t]he power of contempt is inherent in a court, such power being necessary to the exercise of judicial functions." *City of Toledo v. State*, 154 Ohio St. 3d 41, 46, 2018-Ohio-2358, ¶ 22, 2018 Ohio LEXIS 1554, *12 (June 20, 2018), citing *Denovchek v. Board of Trumbull County Comm'rs*, 36 Ohio St. 3d 14, 15, 520 N.E.2d 1362 (1988). Further, "the primary interest involved in a contempt proceeding is the authority and proper functioning of the court." *Id.* at 16. A party can be held in contempt of court for conduct "which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Id.* at 46, quoting *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 271 N.E.2d 815 (1971).

minutiae of the Common Pleas Court’s Entry to evaluate if its determinations were proper in every respect—it need only determine the Court was authorized to direct the Clerk’s conduct in the areas it did. After satisfying this threshold, the law makes plain that Clerk Andrews has not alleged—and cannot allege—that the Judges have a clear legal duty to provide the relief she seeks (*i.e.*, vacating their Entry of May 4). The Court of Common Pleas unequivocally had authority to direct the Clerk in all aspects pertaining to the performance of her duties, particularly as they affected its operations. Provided that its directives to the Clerk arose out of and pertained to this authority, an action in *mandamus* cannot provide a makeshift appeal of the granular elements of that order.

Yet, even if this Court *were* to assess the minute details of the Common Pleas Court’s Entry to assess whether it demonstrated the Judges had a clear legal duty to vacate that Entry, it would find no basis to state a claim. The Entry attached to the Amended Complaint expressly provides the Common Pleas Court took measures it deemed essential to satisfying the Judges’ ethical obligations; that it deemed essential to ensuring the uninterrupted operation of its dockets; and that it assessed as crucial to maintaining the public’s consistent access to court records. (Am. Compl., Ex. I.) The Entry noted that the Common Pleas Court had concluded its directives were necessary and reasonable, and they were the least onerous measures reasonably calculated to preserve the effective and efficient functioning of the Court. *Id.* Further, each element of the Court’s directives related to the areas it is expressly empowered to control, and where the law unequivocally affords Clerk Andrews no discretion. Further, the Common Pleas Court’s Entry identifies extensive support to conclude the reasonableness and necessity of its intervention:

- The Common Pleas Court’s Entry of May 4 is expressly and exclusively limited to the functions of the Court that have a direct relationship to the Court’s operations—*i.e.*, the legal division of the Clerk’s Office. The Entry expressly permits the Clerk to continue her oversight of the Title Division and Passport Acceptance functions of her office without any instruction from the Common Pleas Court. The Clerk remains authorized to report on site to the Title Division’s offices daily, if she wishes, and she’s otherwise under no other

Common Pleas Court directives in her performance of that work—which falls outside the scope of Chapter 2303 of the Revised Code. The Common Pleas Court’s Entry of May 4 relates solely and exclusively to the Clerk’s legal division operations that exist within the Lake County Courthouse and which oversees the maintenance and custody of court records. (Am. Compl., Ex. I, ¶¶ 9, 94-138.)

- The Common Pleas Court identified a significant collection of current and imminent threats to maintaining the minimum staff it needed within the legal division of the Clerk’s office (Am. Compl., Ex. I, ¶¶ 50-59) and among the IT staff that the Clerk and Common Pleas Court share (Am. Compl., Ex. I, at ¶¶ 60-69). This arose from those staffmembers’ credible reports to the Court that they had experienced unsustainable working conditions due to the Clerk treating them in a manner that was disrespectful, unprofessional, and prompting concerns about their physical safety. They relayed imminent threats of mass walkouts that would leave the Common Pleas Court without access to critical records and IT information, absent its intervention. (Am. Compl., Ex. I, ¶¶ 20, 50-59, 65, 69-70, 75-77, 85-94.)
- The staff of the Clerk’s Office likewise provided credible support to the Common Pleas Court that the Clerk’s conduct subjected Clerk staff, Court Staff, lawyers, and the public to behavior that the Judges were obligated to control under CJC R. 1.2, 2.3(B) , 2.8(B) , and 2.12(A). (Am. Compl., Ex. I, ¶¶ *supra*; *see also* 59, 80-83, 85, 95-97; *see also* discussion on pp. 2-3.)
- The Common Pleas Court therefore entered a judicial order on May 4, 2022 that directed Clerk Andrews in several categories of behavior:
 - To address the dire morale, productivity, security, and continuity of personnel within the legal division of the Clerk’s office and Courts IT Department—which jeopardized the courts’ and public’s access to essential court records—the Court issued directives limiting the Clerk’s face-to-face and unmonitored interaction with these employees, addressing the concerns her staff indicated created risks of a mass walkout. (Am. Compl., Ex. I, ¶¶ 100-107.) These directives expressly authorize the Clerk to work on site in the Courthouse once per month, subject to the security and safety measures that addressed the concerns raised by her staff, and to otherwise supervise the work of the legal division remotely, as she successfully demonstrated the ability to do for more than two years following the State of Emergency declared on March 13, 2020. (*Id.*)
 - The Common Pleas Court crafted these directives—which do not contradict any Rule of Superintendence, Revised Code provision, or other authority—after extended consultation with the Clerk’s legal division staff regarding what was reasonable and necessary to ensure the office’s ongoing operation and to maintain the retention of these staff. (Am. Compl., Ex. I, ¶ 134.)
 - To address the adverse treatment of staff within the legal division of the Clerk’s office and Courts IT Department—which jeopardized the courts’ and public’s access to essential court records—the Common Pleas Court issued directives

prohibiting the Clerk’s most problematic managerial conduct and employing oversights that would assure staff that the Court would not allow improper or retaliatory conduct from the Clerk in employment. These directives likewise ensured the Clerk’s staff could route complaints of continued abuse and discrimination to the Common Pleas Court. (Am. Compl., Ex. I, ¶¶ 108-115.¹¹) These directives likewise authorize the Clerk to continue executing her legal division duties; they only impose measures to keep the Court apprised of the Clerk’s oversight of these employees to provide those employees with the requisite assurances they require to avoid a mass wave of resignations that would devastate the Court’s operations and access to records. (*Id.*) The Common Pleas Court crafted these directives—which do not contradict any Rule of Superintendence, Revised Code provision, or other authority—after extended consultation with the Clerk’s legal division staff regarding what was reasonable and necessary to ensure the office’s ongoing operation and to maintain the retention of these staff. (Am. Compl., Ex. I, ¶ 134.)

- To address the adverse treatment of Courts IT staff—which jeopardized the courts’ and public’s access to essential court records—the Common Pleas Court assumed complete personnel oversight of these employees, while maintaining their pre-existing split of shared responsibilities for both the Clerk and Court. (Am. Compl., Ex. I, ¶¶ 116-120.) The Courts IT staff are not among those individuals the General Assembly authorizes the Clerk to hire in R.C. 2303.05; instead, they are among those “officers and employees of courts of record***as the appointing authority finds it impracticable to determine their fitness by competitive examination” within R.C. 124.11(A)(10).) Consequently, the Common Pleas Court was never under an obligation to share personnel oversight regarding these employees; this had been the historical practice in light of the staff performing services for both offices. However, given the threats of resignation from these staff as the result of the Clerk’s treatment, the Common Pleas Court crafted these directives—which do not contradict any Rule of Superintendence, Revised Code provision, or other authority—after extended consultation with the Courts IT staff regarding what was

¹¹ Clerk Andrews’ Amended Complaint contains assertions that are overtly contradicted by the Journal Entry she attaches as an Exhibit. She inaccurately asserts the Journal Entry “effectively removed” her right to supervise employee’s in the Clerk’s Office by “removing” her ability to discipline, transfer, reassign, deny promotion, or demote/terminate any employee. (Am. Compl., ¶ 24.)

First, she raised this allegation as to the *draft* Journal Entry that is not at issue in this matter; further, the Journal Entry only placed restrictions on those members of her staff who were in the *legal division* of her office; and, finally, the May 4 Entry expressly *declines* to divest the Clerk’s oversight of these functions. Instead, it directs the Clerk to engage in a prior consultation with the Common Pleas Court’s administrative or presiding judge before engaging in these material acts of employment and ensure their concurrence—to address the staff’s extensive expressed concerns of unfair and discriminatory treatment, workplace harassment, and fears of retaliation. (Am. Compl., Ex. I, ¶¶ 9, 30-34, 40, 42-46, 50-59, 75-82, 111.)

reasonable and necessary to ensure the office’s ongoing operation and to maintain the retention of these staff. (Am. Compl., Ex. I, ¶¶ 69-70.) Under this directive, the Courts IT staff continue to service all the Clerk’s operational needs they have always performed. (Am. Compl., Ex. I, ¶¶ 116-120.)

- To address the Clerk’s treatment of staff and the effect this has on the public’s perception of the courts and the fair administrative of justice, the Common Pleas Court directed the Clerk to comply with the provisions of the Code of Judicial Conduct that had created repeated cause for concern. (Am. Compl., Ex. I, ¶¶ 121-123.) These directives do not contradict any Rule of Superintendence, Revised Code provision, or other authority—in fact, they merely require the Clerk to comply with the Rules of Superintendence and Code of Judicial Conduct.
- To ensure uninterrupted access to court records and that the Common Pleas Court’s operations would not be hindered by its Order, it directed the Clerk not to retaliate by destroying, compromising, or continuing to contribute its share for the hardware and software that supply these systems. It instructed her not to destroy any records or cause any other disruptive or destructive act that would compromise the Common Pleas Court’s operations or access to court records. These directives do not contradict any Rule of Superintendence, Revised Code provision, or other authority—in fact, they do nothing more than maintain the *status quo* regarding the Clerk’s maintenance of court records and technology facilitating that maintenance. (Am. Compl., Ex. I, ¶¶ 124-131.)
- To ensure its ability to enforce this Order, the Common Pleas Court set forth a mechanism for enforcement of its Entry—and a mechanism to evaluate its reasonableness and necessity as circumstances could potentially warrant in the future:
 - Potential violations would be assessed via a due process hearing to show cause and demonstrate why a violation had not occurred and/or why the Clerk should not be held in contempt. (Am. Compl., Ex. I, ¶¶ 132-137.)
 - Because none of the concerns raised within the Entry will cease to abate with the mere passage of time, the Common Pleas Court noted that the Entry’s terms have no expiration date; they are final and permanent. However, the Common Pleas Court likewise pledged to regularly re-assess the necessity of the directives within the Entry—at least monthly—to assess whether circumstances warranted a new, superseding Entry that may adjust the directives in light of changed circumstances. (Am. Compl., Ex. I, ¶¶ 132-137.)
 - The Common Pleas Court crafted these directives—which do not contradict any Rule of Superintendence, Revised Code provision, or other authority—with the consideration of what was reasonable and necessary to ensure the uninterrupted access to court records and the operation of the Court and Clerk’s office. (Am. Compl., Ex. I, ¶¶ 134-136.)

3. Clerk Andrews has adequate remedies at law.

a. The May 4, 2022 Entry is a final, appealable order.

Clerk Andrews inaccurately alleges that, because the Common Pleas Court’s May 4 Entry was not expressly designated as a “final order,” and that it is expressly subject to revision on the first of each month, it is somehow neither final nor appealable. (Am. Compl., ¶ 65.) This is inaccurate. R.C. 2505.03(A) grants appellate jurisdiction over “[e]very final order of a court.” A trial court judgment can be immediately reviewed by an appellate court if it constitutes a “final order.” *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶ 3. There is no requirement that the Court apply the language “final order” for it to be so: A decision—whether styled as an order, judgment, or otherwise—is deemed final when it reaches the court’s final determination of the rights and obligations of the parties and disposes of the issues in controversy. *State v. Craig*, 159 Ohio St.3d 398, 2020-Ohio-455, 151 N.E.3d 574, ¶ 20. It likewise is final where an order affects a substantial right—*i.e.*, one that “a statute, the common law, or a rule of procedure entitles a person to enforce or protect” R.C. 2505.02(A)(1)—but somehow otherwise prevents a judgment. R.C. 2505.02(B).

A judgment that leaves issues unresolved and contemplates further action is not final or appealable, *VIL Laser Sys., LLC v. Shiloh Indus., Inc.*, 119 Ohio St.3d 354, 2008-Ohio-3920, 894 N.E.2d 303, ¶ 8, but that is not at issue here: The Common Pleas Court’s Entry was unequivocally final, noting “The directives within this Entry ***have no expiration date*** because the passage of time alone will not resolve the imminent threat to the uninterrupted provision of services to the courts. Further, after extended consultation with the legal division staff of the clerk, the directives within this Entry represent the conditions the courts have determined are currently reasonable and necessary to ensure the ongoing operation of the legal division of the clerk’s office and courts, and

the ongoing retention of the legal division staff.” (Am. Comp., Ex. I, ¶¶ 133-134.) (emphasis added)

This demonstrates that the Entry’s terms the Common Pleas Court imposed were permanent—*i.e.*, it is final. Clerk Andrews challenges this by noting that the Common Pleas Court articulated its intention to monitor the climate between its office and the Clerk, and it could potentially issue a future superseding order: The Entry provided that the Common Pleas Court only wished to employ the terms that it did for so long as it remained necessary; therefore, particularly because its terms were permanent and had no expiration date, it likewise pledged to regularly assess whether all the directives it imposed remained necessary in the future. Its solution to do this was, at least once per month, it would issue “*subsequent* Journal Entries” to memorialize its assessment of whether any relevant changes warranted issuing a new Entry that modified any of the directives within the current one. (Am. Compl., Ex. I, at ¶¶ 135-137.)

That is, Exhibit I is permanent and its terms have no expiration—it is final and appealable. While the Common Pleas Court has pledged to issue subsequent monthly entries to assess the climate within the Clerk’s office, these will not be final and appealable entries in most instances; they are likewise unlikely to even constitute judicial action. Rather, they are likely to amount to administrative entries conveying the recent status—at least if they do not impose any conditions upon the Clerk, nor issue new or altered terms that supersede the May 4 Entry. A subsequent Entry that *supersedes* the May 4 Entry would be the next instance in which another final, appealable order occurs. But the May 4 Entry is final and appealable because its conditions do not expire; it has no guarantees of modification; and it left no determination outstanding.

b. *Mandamus* is not an available remedy to vacate a judgment, absent jurisdictional defects of service and notice that effectively deprived the Relator of an adequate remedy at law.

The Common Pleas Court’s May 4 Entry cannot be reviewed or modified in *mandamus*

because Clerk Andrews’ plain and adequate remedy at law—by way of appeal—is her exclusive means of recourse. *See* part II.B.2.c.

c. *Mandamus* is unavailable because declaratory relief provides an adequate remedy at law.

Where—as here—a successful action for a declaratory judgment would provide all the needed relief to address the issue pursued in *mandamus*, it likewise demonstrates an adequate remedy at law that precludes *mandamus* relief. *State ex rel. Schroeder v. City of Cleveland*, 150 Ohio St.3d 135, 2016-Ohio-8105, 80 N.E.3d 417, ¶ 18, *citing State ex rel. Gilmour Realty, Inc. v. City of Mayfield Hts.*, 119 Ohio St. 3d 11, 2008-Ohio-3181, 891 N.E.2d 320, ¶ 16. A declaration that the Common Pleas Court’s Entry was unlawful would provide the Clerk with the remedy she seeks in *mandamus*—to invalidate the Judges’ Entry. No additional or ancillary relief, such as an additional directive or injunction, would be required to accomplish her desired remedy. The adequacy of this remedy at law therefore invalidates her entitlement to relief in *mandamus*.

E. Clerk Andrews Has Not Articulated a Viable *Quo Warranto* Claim.

Clerk Andrews asserts that, in the alternative, she is pursuing a claim in *quo warranto*. However, she has not articulated the basic requirements to state a claim as a matter of law. Pursuant to R.C. 2733.01, a civil action in *quo warranto* may be brought against a public officeholder in only two situations: (1) when that person “usurps, intrudes into, or unlawfully holds or exercises a public office;” or (2) when that person “does or suffers an act which, by law, works a forfeiture of his office[.]”

R.C. 2733.06 permits an individual citizen to commence an action in *quo warranto* if that person is “claiming to be entitled to a public office unlawfully held and exercised by another * * *.” A private person cannot maintain an action in *quo warranto* except under the authority of R.C. 2733.06, and “he must show not only that he is entitled to the office, but also that it is unlawfully

held and exercised by the defendant in the action.” *State ex rel. Halak v. Cebula*, 49 Ohio St.2d 291, 292, 361 N.E.2d 244, 246 (1977), quoting *State ex rel. Heer v. Butterfield*, 92 Ohio St. 428, 111 N.E. 279 (1915), ¶ 1, syll.; *State ex rel. Smith v. Nazor*, 135 Ohio St. 364, 21 N.E.2d 124 (1939); *State ex rel. Lindley v. The Maccabees*, 109 Ohio St. 454, 142 N.E. 888 (1924).

1. Clerk Andrews has not alleged either that she has been deprived of her office, nor that the Common Pleas Court or its judges hold it in her place.

Even if taking all of the Clerk’s allegations as true, she has not alleged the elements of a *quo warranto* claim: She has not alleged that she has been deprived of her office, nor that the Common Pleas Court or its judges are actually holding it in her place. These are both required to state a claim. *Steiniger v. Board of Comm’rs*, 60 Ohio App. 3d 122, 573 N.E.2d 1212, 1989 Ohio App. LEXIS 4208 (Ohio Ct. App., Butler County 1989); *State ex rel. Delph v. Barr*, 44 Ohio St.3d 77, 541 N.E.2d 59 (1989); *State ex rel. Heer v. Butterfield*, 92 Ohio St.428, 111 N.E.279 (1915).

Clerk Andrews regularly criticizes the Judges’ failure to follow the procedure within R.C. 3.07-3.08, as well as affording her the due process required within Art. II, Sec. 38 of the Ohio Constitution, before removing her from office (Am. Compl., ¶¶ 2, 58, 62, 71); however, the Judges’ Entry expressly notes they are *not* removing her from office—and they are therefore not under any obligation to follow these processes. Throughout the plain language of the Common Pleas Court’s Entry itself, it is apparent the Judges did not deprive Clerk Andrews of her office, and that the Judges expressly avoided any possibility of doing so:

- The Judges’ Entry expressly notes that a process exists to remove the Clerk from office, which the Judges likewise expressly note they are *not* pursuing. They note they are instead imposing conditions upon the Clerk’s performance of her duties because the urgency of the conditions within the Clerk’s Office legal division did not allow waiting for such a procedure to remedy their concerns. (Am. Compl, Ex. I, ¶ 98.)
- The Entry expressly notes that the Clerk continues to serve as the Clerk of Courts—the Common Pleas Court’s directives all explicitly address *how* and *where* she must proceed

in the exercise of her legal division functions as the Clerk. They in no way remove her from conducting these functions. (Am. Compl., Ex. I, ¶¶ 100-131.)

- The Entry expressly declines to impose any restrictions on the Clerk’s exercise of her duties within the Title Division or U.S. Passport Acceptance Division of her office. (Am. Compl., Ex. I, ¶¶ 9, 94-138.) In these divisions, the Judges have imposed no directives regarding how or where she performs those functions.
- Most importantly, the Entry expressly imposes terms that ensure she maintains the office, and the emoluments (*i.e.*, the salary) of that office: The Entry noted that, for County Officers to preserve their elected office and continue drawing their salary, R.C. 305.03(A)(1) requires them to perform their duties without an absence of 90 days or longer. (Am. Compl., Ex. I, ¶ 98.) The Code imposes no penalties for the Clerk performing her duties exclusively from an off-site location—and the Court noted her successful ability to attend to the duties of her office remotely throughout the COVID-19 pandemic. (Am. Compl., Ex. I, ¶¶ 102.) However, the Entry nonetheless authorized the Clerk to work on site within the legal division once each month, expressly to avoid interfering with this requirement.

Clerk Andrews has neither alleged that she has been deprived of holding her office, nor that she has been deprived of the salary she is entitled to receive in this role—nor could she. She has only alleged the Judges imposed requirements pertaining to how she performs her legal division duties—which they are expressly and unequivocally authorized to do. (*See* part II.C.2.) This fails to amount to the minimum elements required to support a *quo warranto* claim as a matter of law.

2. Clerk Andrews Cannot Obtain Extraordinary Relief Because She Has Adequate Remedies at Law.

Finally, as discussed in part II.D.3., *supra*, Clerk Andrews had multiple adequate remedies at law to challenge the Common Pleas Court’s Journal Entry of May 4. This likewise precludes her eligibility to recover in *quo warranto* as well. *State ex rel. Capretta v. Zamiska* 135 Ohio St.3d 177, 2013-Ohio-69, 985 N.E.2d 454, ¶¶8-14.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully seek a dismissal of Relator’s Complaint for failure to state a claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11(C), I certify that I submitted this pleading to the following via electronic mail on this 14th day of June, 2022:

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