IN THE SUPREME COURT OF OHIO

**THE STATE OF OHIO, ex rel.
FAITH ANDREWS, CLERK OF
COURTS FOR LAKE COUNTY, OHIO** **CASE NO: 2022-0409**

Relator, **ORIGINAL ACTION**

v.

**THE COURT OF COMMON PLEAS
OF LAKE COUNTY, OHIO, et al.,**

Respondents.

MEMORANDUM IN RESPONSE TO MOTION TO DISMISS

Edmund W. Searby (No. 0067455)
(COUNSEL OF RECORD)
Kevin J. Kelley (No. 0077707)
PORTER WRIGHT MORRIS & ARTHUR LLP
950 Main Avenue, Suite 500
Cleveland, OH 44113-7201
(440) 443-9000 (Tel.)
(440) 443-9011 (Fax)
esearby@porterwright.com
kkelley@porterwright.com

L. Bradfield Hughes (No. 0070997)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2053 (Tel.)
(614) 227-2100 (Fax)
bhughes@porterwright.com

Counsel for Relator Faith Andrews, Clerk of Courts for Lake County, Ohio

Linda L. Woeber (0039112)
MONTGOMERY JONSON LLP
600 Vine Street, Suite 2650
Cincinnati, OH 45202
Tel: (513) 768-5239
Fax: (513) 768-9244
lwoeber@mojolaw.com

Kimberly V. Riley (0068187)
MONTGOMERY JONSON LLP
14701 Detroit Avenue, Suite 555
Lakewood, OH 44107
Tel: (440) 779-7978
kriley@mojolaw.com

Counsel for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Rules

Other Authorities

I. INTRODUCTION

In the First Amended Complaint in this action, Relator Faith Andrews, Clerk of Courts for Lake County, Ohio, detailed how the Respondents, Judges of the Lake County Court of Common Pleas (collectively "Judges") have deprived her of her office without due process and otherwise abused judicial power contrary to law. The Judges' Motion to Dismiss the First Amended Complaint ("Motion to Dismiss") never fairly addresses the allegations in the Complaint, the shocking orders imposed upon Ms. Andrews, or the law of this Court supporting the issuance of extraordinary writs to stop an unprecedented abuse of judicial power. Instead, the Judges set forth pages of boilerplate to support "the inherent authority" of the court and the "ministerial duties of the clerk," and then mischaracterize what transpired as "informal discussions" and benign "directives" as to how Ms. Andrews might better perform her duties well within the authority of the court.

But this entire argument is predicated upon largely ignoring what is actually alleged in the Amended Complaint and indisputably stated in the Judges' orders. The Judges know this, and they even suggest this Court should not carefully read the orders, see Motion to Dismiss at p. 40 ("[t]his Court … is not obligated to review the minutiae of the Common Pleas Court's Entry to evaluate if its determinations were proper in every respect…"), but instead accept conclusory statements that "each element" is within the inherent authority of the Court. Only in one footnote, do the Judges acknowledge what is actually at issue in this case: their "inherent authority is not absolute" and "it does not empower courts to bypass constitutionally sound statutory requirements in the name of their inherent authority." *Id*. at 32, n. 8.

Fairly considered, the Judges' orders constitute such a clear abuse of authority in contravention of clearly established constitutional and statutory requirements. The Judges have

not simply given direction to Ms. Andrews in the performance of her duties, but have expressly forbidden her under threat of contempt from being physically present in the courthouse except for one day a month and reassigned her elected duties without any of the due process clearly afforded under constitutional and statutory requirements. Specifically, the Judges have circumvented the sole right of the electorate to initiate a removal action, denied her constitutional right to notice of the charges in a complaint served upon her, denied her the right to be heard formally or informally, and denied her the jury trial guaranteed under law. In place, the Judges have made *ex parte* findings in a non-existent case where the Respondents serve as plaintiff, judge, and jury, and Ms. Andrews has no opportunity to offer evidence or even to know the witnesses against her.

In a further abuse of power, the Judges impose upon Ms. Andrews under penalty of contempt a naked prior restraint to bar her from making public statements about unethical conduct in the Clerk's office or to make any statement about any "person or officer" of the court that is deemed "denigrating" or "demeaning." Furthermore, without exhausting the summary of content offensive to basic legal requirements and fairness, the orders impose extraordinary security arrangements to suggest without any factual basis that Ms. Andrews is a mentally imbalanced threat to the physical safety of others and to otherwise harm her reputation in the eyes of the voters.

Accordingly, by this action, Ms. Andrews seeks to restore the rights and duties of her elected office subject to potential proceedings that comply with law, and to restore her rights to freedom of speech. She seeks extraordinary writs, but this an extraordinary case. The Judges' seek to end this case without any real scrutiny of the extreme judicial misconduct at issue. The Motion to Dismiss fails on the law. The extraordinary writs of prohibition, mandamus, and quo

warranto exist to provide an actual remedy in cases where judges act outside the authority granted to them. No matter how angry or numerous they may be, the Judges are not above the law.

II. FACTUAL AND PROCEDURAL BACKGROUND

The complete factual and procedural background is set forth in the First Amended Complaint at p. 6-23 and in the attached exhibits. Relator Andrews will not restate all of the allegations herein, but instead highlights certain facts which are dispositive of this motion and are ignored or mischaracterized in the Motion to Dismiss.

Ms. Andrews is the elected Clerk of Lake County, Ohio. Compl., ¶ 21; Affidavit of Faith Andrews, ¶ 4 ("Andrews Aff.," attached to the First Amended Complaint). She campaigned based upon a promise to improve the transparency, efficiency, and fiscal accountability of the Clerk's Office. Compl., ¶ 10; Andrews Aff., ¶ 2.

Ms. Andrews soon learned that even recommending improvements would face resistance and outright hostility. After Ms. Andrews privately raised with the budget director disagreement with the Clerk's Office funding in part a software application not used by the employees of her office, she received by email from Judge Lucci a letter signed by the Judges addressing disagreement with her position as to the funding of the software. Amongst other statements, the letter stated that Ms. Andrews misunderstood her "role" and that her duties were simply "ministerial." Andrews Aff., Exhibit A at pp. 1, 6. The letter further threatened to "journalize an order of the court, but, in the interest of collegiality and cooperation and not airing to the public internal difficulties caused by your misunderstanding your role, we are providing you an opportunity to consider this letter as what a journal entry might contain, and comply." *Id*., at pp. 5-6.

But the typed letter did not resolve the furor towards Ms. Andrews. The following month, Respondents sent a draft Journal Entry and again reminded Ms. Andrews that her duties are only ministerial and that she "must obey court orders." Andrews Aff., Exhibit C at p. 1. The Journal Entry further directed that the Clerk of Courts "pay one-half of the costs associated with the operation of the Court's IT department" and that if the Clerk lacked the funds, the County Commissioners must pay it. The Journal Entry further accused Ms. Andrews for the first time of "conduct unbecoming of her office." *Id*. at p. 2. The Journal Entry concluded by stating that "[A]ny violation of this order by the Clerk of Courts or the Board of Lake County Commissioners shall be considered a contempt of court, and punishable as such by fine and/or imprisonment." *Id*. at p. 4.

The situation only grew worse. On March 4, 2022, Ms. Andrews went to see Judge Lucci for what she expected to be an informal meeting. Andrews Aff. at ¶ 11. Instead, she was directed into Judge Lucci's Courtroom where he sat on the bench with the other Judges present. From the bench, he excoriated Ms. Andrews without affording her any opportunity to speak. *Id*. At this time, Respondent Lucci hand delivered a letter with a journal entry ("March 4 Journal Entry," attached as Exhibit E to the Andrews Aff). *Id.* While Respondents characterize this conduct as only "administrative," Judge Lucci caused two Sheriffs to lead Ms. Andrews out of the Courthouse.

The letter accompanying the Journal Entry stated that the Judges have "investigated a multitude of claims and allegations," and forbade her "presence in the Courthouse buildings, the parking lots, or your office from 4:00p.m. today until Monday, March 7, 2022 at 8:30 a.m." *Id.*, and Exhibit D. The letter further threatened judicial and criminal sanctions warning that failure to obey "will be considered a criminal trespass, subjecting you to contempt of court and/or

criminal charges." *Id.* The letter further demanded an answer by noon on Sunday, March 6, 2020 by email to one question, "Will you comply with every provision of this Journal Entry?" *Id.*

The accompanying March 4, Journal Entry speaks for itself. The Judges tell this Court that it is only a "draft(s) … devoid of any legal or judicial significance" (*Id*., at p. 18), but the March 4 Journal Entry is a twelve page typed Journal Entry with a case caption for a non-existent judicial matter and signed by some of the Judges. As Judge Lucci's letter states, it reflects an investigation of a "multitude of claims and allegations," and "the exhaustive opinion of all of the Judges." Andrews Aff., Exhibit D, at p. 1. While not journalized, the letter plainly stated that if Ms. Andrews did not agree in writing to comply with its terms, then the Judges "have a signed original which we will immediately journalize and enforce to the fullest extent of our authority." *Id.*, at p. 2. The Journal Entry further provides that "the judges will enforce a violation of any provision in this order as contempt of court and such shall result in fine and/or imprisonment." *Id.*

Respondents characterize this and the prior Journal Entry as simply "administrative" orders within the Court's inherent authority over the operations of the Court, but they do not acknowledge the following extraordinary provisions in the March 4 Journal Entry:

- Forbids Ms. Andrews, the elected clerk, from being present in the Courthouse except on day a month;
- Orders that "the Supervising deputy clerks of court shall oversee the day-to-day operations of the court";
- Removes her right and duty as Clerk of Courts to supervise the employees in her office, denying her basic supervisory rights including:
    - "to terminate, remove, discipline, or suspend any employee" (¶ 44);

- "to withhold" any "salary increases" or "benefits;"
- "to transfer or reassign any employee;"
- "deny … a promotion that otherwise would have been received;"
- "reduce any employee in pay or position" without prior consultation;
- "(H)ire any new employee" without prior consultation; and
- Maintaining a file on any employee (¶ 45).

Extraordinary Security Measures

Without stating any valid justification, the March 4 Journal Entry implemented extraordinary security measures suggesting that Ms. Andrews posed a physical threat to the safety of others during her one day a month in the Courthouse, including:

- Posting a sheriff's deputy "in the area of the clerk's office … whenever the clerk is in the office" (¶ 43);
- "One of the security cameras in the clerk of courts' office shall be aimed towards and display the area just outside of the clerk's personal office…" (¶ 42);
- The clerk's personal office is subject to an administrative search at any time…" (¶ 41);
- "When the clerk of courts is physically present in the courthouse, the clerk shall pass through the same security screening as all other employees…" (¶ 39); and
- "The clerk may not convey or attempt to convey, or possess or have under her control, a firearm, other deadly weapon, or dangerous ordnance …"[1] (¶ 40).

[1] "Ordnance" is defined as "military supplies including weapons, ammunition, combat vehicles, and maintenance tools and equipment." See https://www.merriam-webster.com/dictionary/ordnance (visited June 22, 2022).

Without exhausting the baseless, unlawful, or unconstitutional provisions, the Journal Entry further included a gag order or prior restraint on speech, providing that "[T]he clerk shall not make public statements or accusations about allegations she may have about criminal or other illegal activities occurring within the office of the clerk of courts, unless in consultation with, or requested by, the prosecutor's office or law enforcement as part of a bonafide investigation." *Id.*, at ¶ 46.

Respondent Judges not only avoid the content of the March 4 Journal Entry, but the fact that the Judges never afforded Ms. Andrews the opportunity to informally discuss any real concerns before finalizing it and serving it upon her in open court. Compl. at ¶ 28; Andrews Aff. at ¶ 16. The Journal Entry further purports to be the product of "a multitude of claims and allegations" from unnamed sources with the Judges serving as both adversary and factfinder. Ms. Andrews was provided no advance notice of the allegations against her, afforded no opportunity to confront the witnesses against her or to even be heard as to the allegations.

In substantially removing Ms. Andrews from the rights and duties of her elective office, the Judges expressly acknowledged the requirements of Ohio Constitution, Article II, Section 38 and R.C. 3.08, but stated that "such a removal action would take more time than the situation allows." March 4 Journal Entry, ¶ 38. With this justification, the Judges removed Ms. Andrews from her elected position without complying with the constitutional and statutory requirements.

Without hope of informally resolving this dispute, Ms. Andrews filed this action on April 18, 2022. Unable to perform her duties while excluded from the Courthouse on all but one day a month, Ms. Andrews notified the Court that she intended to return physically to her office full time. Andrews Aff., at ¶ 28. This Ms. Andrews did without incident on May 2 and May 3, 2022.

However, the next day – May 4, 2022 – the Respondents journalized a twenty-six page journal entry ("the May 4 Order"). Andrews Aff., Exhibit I. The May 4 Order repeated the same unlawful directives summarized above. *See also* Compl., ¶ 48. To wit, the May 4 Order again barred Ms. Andrews from being physically present in the Courthouse but one day a month, and ordered that the "supervising deputy clerks of court shall oversee the day-to-day operations of the Court."

Like the March Journal Entry, the May 4 Order again acknowledged the Ohio Constitutional and statutory requirements to remove an elected official from office, but expressly declined to follow, the required process because it was not a "timely remedy." *Id*. at ¶ 98.

Although Ms. Andrews strongly challenged the extreme security measures imposed in the March Journal Entry and the lack of any proof they were necessary, the May Order imposed the same security measures (posting a deputy "in the area of the Clerk's Office, aiming a security camera at her door, subjecting her to intrusive administrative search," and others) still without stating any specific facts to support their necessity. Respondents again contrived the false and defamatory portrayal of Ms. Andrews as a mentally unbalanced individual who poses a threat to the physical safety and well-being of others.[2] This time, however, knowing that the Journal Entry would be available for all, the Respondents include a gratuitous (and false) allegation that Ms. Andrews spoke in "graphic detail about sex acts she performed with her husband" at a Clerk's Office holiday party. *Id.*, at ¶ 48.

Whether or not the allegations and findings made against Ms. Andrews are true or false, the May 4 Order again denies all due process to Ms. Andrews. It is purportedly entered in a

[2] In the May 4 Order, the Respondent Judges dropped the prior reference to her as "paranoid." *Id*. at ¶ 48.

fictitious case: *Lake County Court of Common Pleas vs. Defendant*, Case No. 22AA000001. Ms. Andrews still has not been served with any complaint or other advance notice of the charges against her, much less a complaint endorsed by 14,000 electors in Lake County (the approximate number of electors required for recall under R.C. 3.08). She has still not been afforded the opportunity to be heard. She has not been afforded the trial required under law. Based upon anonymous sources, the Judges who are the plaintiff prosecuting the allegations against her also purport to make judicial findings against her.

Following the May 4 Order, Ms. Andrews filed her First Amended Complaint incorporating the May 4 Order. Respondents have moved to dismiss, and for the reasons that follow, including the complete lack of jurisdiction of the Court of Common Pleas and abuse of judicial power, this motion to dismiss should be denied and the writs granted.

III. ARGUMENT

A. The Amended Complaint States Valid Claims For The Issuance Of Writs To Address Clear Abuses Of Judicial Power Unauthorized Under Law

Ms. Andrews respectfully seeks extraordinary writs to stop extraordinary abuses of judicial power, to compel the Judges to follow basic Constitutional and statutory limits, and to restore the rights and duties of her elected office. The Judges move this Court to dismiss this action without fair consideration of what they have actually done. This is not the law.

In reviewing this complaint or petition, this Court presume all factual allegations to be true, and makes all reasonable inferences in Ms. Andrew's favor. *State ex rel. Dieter v. McGuire*, 119 Ohio St.3d 384, 387, 894 N.E. 2d 680 (2008). Dismissal is only appropriate if "it appears beyond doubt that they could prove no set of facts entitling them to the requested extraordinary relief." *Id*. The Judges acknowledged this standard (Motion to Dismiss at p. 5), but then largely ignore the specific allegations at issue.

B. Ms. Andrews States A Valid Claim for A Writ of Prohibition

Ms. Andrews seeks a writ of prohibition to stop the exercise of judicial power which is contrary to and unauthorized under law. To demonstrate entitlement to a writ of prohibition, Ms. Andrews must establish that (1) the Judges are "about to or [have] exercised judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by the law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law." *State ex rel. Fiser v. Kolesar*, 164 Ohio St.3d 1, 2020-Ohio-5483, 172 N.E.3d 1, ¶ 7, quoting *State ex rel. Balas-Bratton v. Husted*, 138 Ohio St.3d 527, 2014-Ohio-1406, 8 N.E.3d 933, ¶ 15.

1. *The Judges Have Exercised Judicial Power and Threaten to Continue to Exercise Judicial Power*

The Judges concede that the May 4 Order qualifies as an exercise of judicial authority (Motion to Dismiss at p. 15), but argue that the prior Orders and directives that were not journalized are only administrative. This argument is not dispositive of this motion and also invalid.

As an initial matter, the allegations of the Complaint demonstrate that the Judges' contentions are without merit. For example, the March Journal Entry[3] and accompanying letter is plainly an exercise of judicial authority. In serving Ms. Andrews with these documents, Judge Lucci took the bench in an obvious display of judicial authority. Andrews Aff. at ¶ 11. At the Judges' direction, two sheriffs' deputies then escorted Ms. Andrews out of the Courthouse. *Id*. This was not an "informal discussion." Motion to Dismiss at p. 25 (claiming that at the time of

[3] In a fine example of this Orwellian nature of this case, the Judges state that Ms. Andrews "regularly mischaracterizes these unjournalized draft entries and orders as "Journal Entries" or "Orders." Motion at 17. The Judges themselves titled the March 4 Journal Entry as a "Journal Entry" and signed it. The word "draft" nowhere appears on this document.

the initial filing, Ms. Andrews "alleged the Common Pleas Court had only engaged in the informal discussions and provisions of draft entries…").

Nor is the characterization of the Judges prior orders as "not binding" "unenforceable drafts devoid of legal significance" (Motion to Dismiss at p. 18) true or fair. For example, Judge Lucci's letter served with the March Journal Entry states **"The judges forbid your entry into or presence in the courthouse buildings" and that a violation "will be considered a criminal trespass, subjecting you to contempt of court and/or criminal charges."** Andrews Aff., Exhibit D (emphasis in the original). This was not some "nonbinding" directive but a clear exercise of immediate judicial power. *Fiser* at ¶ 14 (threat of contempt is a judicial act).

Furthermore, the Judges made clear that unless Ms. Andrews agreed to be bound by the March Journal Entry, "the judges have a signed original which we will immediately journalize and enforce to the fullest extent of our authority." Andrews Aff., Exhibit D at p. 2. By these terms, the Journal Entry communicated to Ms. Andrews that she would be punished for action occurring prior to the filing of the signed Journal Entry.

In any event, the Judges' efforts to "walk back" signed documents because they were not filed or journalized is misplaced. A writ of prohibition applies where a court has not only exercised judicial authority but "is about to" exercise judicial or quasi-judicial power. *Fiser* at ¶¶ 27-28. A signed twelve page "Journal Entry" that will be "immediately" filed and enforced under penalty of "contempt of court," resulting in "fine and/or imprisonment" is certainly a threatened exercise of "judicial or quasi-judicial power."

In *Fiser*, this Court held a journal entry by the administrative judge vacating another judge's pay raises for court personnel to be judicial action and granted a writ of prohibition against the vacating order. *Id.* at ¶ 23. This Court rejected the administrative judge's argument

that the vacating entry was not an exercise of judicial power because "the entry addressed a matter internal to the Court rather than resolving a dispute between litigants before the Court." *Id.* at ¶ 9. In finding judicial action, this Court emphasized the administrative judge's threat of contempt. *Id.* at ¶ 14, quoting *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 555, 740 N.E.2d 265 (2001) ("[W]e cannot ignore the fact that Judge Kolesar issued his threat in an attempt 'to compel obedience to a court order,' which is a feature of a civil-contempt sanction"). Here, as in *Fiser*, the Judges not only threatened contempt (with fines and/or imprisonment) but in fact ordered on March 4 that Ms. Andrews leave the Courthouse and faced contempt of court and/or criminal charges if she returned. Andrews Aff., Exhibit D at p. 2. As in *Fiser*, these orders constituted judicial conduct "in an attempt to compel obedience" with a court order.

Likewise, the substance of the March Journal Entry like the later filed May 4 Order has a clear (yet improper) "core judicial" function of making findings of fact and applying the law to the facts. *Fiser* at ¶ 13, citing *Fairview v. Giffee*, 73 Ohio St. 183, 190, 76 N.E. 865 (1905) ("It is indisputable that it is a judicial function to hear and determine a controversy between adverse parties, to ascertain the facts, and applying the law to the facts, to render a final judgment").

Here, fairly considered, the March Journal Entry makes substantial findings of fact based upon review of a multitude of claims and allegations." Andrews Aff., Exhibit E at ¶¶10-33. The transmittal letter for the March Journal Entry (Andrews Aff., Exhibit D) at page 1 sets forth the law purportedly establishing the Judge's authority over the Clerk and then issues under penalty of contempt of court the extraordinary "directives that follow." While, as discussed below, patently outside the authority of the Court, this is unquestionably judicial conduct and it is plainly intended to invoke the authority of the Court.

Even if the Journal Entry, letter, and other orders entered prior to filing did not constitute judicial action -- which for the reasons set forth above it does -- then this first element would still be satisfied by the May 4 Order which is conceded to be judicial action.

2. *The Exercise of Judicial Power is Unauthorized by Law*

The Judges make no real effort to demonstrate that their specific directives in the March Journal Entry or the May 4 Order are authorized under law.[4] Instead, the Judges set forth general case law regarding the duties of a Clerk and the Court's "inherent authority" over this "ministerial" office while avoiding mention of what they actually ordered and the lack of authority under law. They then claim in a conclusory fashion that their conduct falls within that inherent authority, and that this Supreme Court "is not obligated to review the 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." Motion to Dismiss at pp. 39-40.

a. The Judges Overstate Their Authority over the Clerk of Courts

As an initial matter, the scope of R.C. 2303.26 does not permit the level of control claimed by the Judges. The General Assembly created the office of the clerk in R.C. 2303.01. R.C. 2303.26 provides, "[t]he 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 [of common pleas]."

[4] The Judges float the proposition that "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." Motion to Dismiss at p. 24-25. Not surprisingly, the Judges can cite no authority in support. While unclear what is meant by "overbroad," it cannot logically support the idea that once a court has subject matter jurisdiction to order something, that it can order something else without any authority and a writ of prohibition is unavailable to stop it.

The "official duties" are enumerated in other statutes. R.C. 2303.08 describes the mechanics of filing and making records. R.C. 2303.09 requires the clerk to "file together and carefully preserve in his office all papers delivered to him for that purpose in every action or proceeding," and R.C. 2303.14 directs the clerk to "keep the journals, records, books, and papers appertaining to the court and record its proceedings."

None of the complained-of elements of the March Journal Entry and the May 4 Order address the "direction" of the "official duties." Nor do the Judges cite any other legal authority for their extreme usurpation of the Clerk's duties, but instead implicitly rely on the absence of a direct prohibition. But as Justice Douglass said in dissenting from the dismissal of an original action brought by a clerk, "I have been unable to find in those sections (concerning the authority of municipal judges) or in any other section the right of the judges to control, direct, or otherwise interfere with the operation of the clerk's office." *State ex rel. Hunter v. Certain Judges of the Akron Mun. Court*, 71 Ohio St.3d 45, 50, 641 N.E.2d 722 (1994).

Furthermore, the Judges unlawfully usurp Ms. Andrews' authority to appoint her own deputy clerks provided by R.C. 2303.05. May 4 Order at ¶ 111. Indeed, in further implicit contradiction of this provision, the Judges reassigned Ms. Andrews rights to supervise the day-to-day operations of the court to the deputy clerks. *Id*. at ¶ 100.

b. The Judges Have No Authority to Override the Constitutional and Statutory Requirements For the Removal of An Elected Official

In a footnote, the Judges finally acknowledge their inherent authority is not absolute – it does not empower courts to bypass Constitutionally sound statutory requirements in the name of their inherent authority." Motion to Dismiss at p. 32, fn. 8.

Of course, the Judges have not simply directed her in the performance of Ms. Andrews' duties; they effectively removed her from her elected office. Under the March Journal Entry and

the May 4 Order, the Judges forbid Ms. Andrews from being physically present in the Courthouse but for one day a month, and they have reassigned her duties to "[t]he supervising deputy clerks of court [who] shall oversee the day-to-day operations of the Court." Andrews Aff, Exhibit E at ¶ 37, Exhibit I at ¶ 100. The Judges further have removed all right to supervise her staff. *Id.*, Exhibit I at ¶ 111.

Moreover, these actions and orders plainly violate constitutional and statutory prerequisites to the removal of an elected official from office. Article II, Section 38 of the Ohio Constitution provides that the removal of officers requires "complaint and hearing." Long ago, this Court recognized that this constitutional provision "clearly and concretely extends to" all officers "due process of law…a law, which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial." *State ex rel. Hoel v. Brown*, 105 Ohio St. 479, 487, 138 N.E. 230 (1922).

Consistent with these principles, R.C. 3.08 mandates that the removal of public officers "shall be commenced by the filing of a written or printed complaint specifically setting forth the charge" and "signed by qualified electors," "not less in number than percent of the total vote cast for governor in the political subdivision whose officer it is sought to remove." The statute further provides for a hearing within "thirty days from the date of the filing of the complaint by said electors," and a trial by twelve jurors if demanded "by the officer against whom the complaint has been filed." *Id*.

In effectively removing Ms. Andrews from her elected office, the Judges have acted in callous disregard of all of these constitutional and statutory requirements. There has been no complaint specifying the charges against her, much less one signed by fifteen percent of the electors, no opportunity for Ms. Andrews to be heard or present witnesses in her favor, and no

right to trial by jury. Compare R.C. 3.08. By this complete denial of due process, the Judges further serve both as accuser and finder of fact in perversion of the most basic norms of our system of justice.

As to the constitutional and statutory requirements blocking their desired course of conduct, the Judges simply stated that "the removal action would fail to provide a timely remedy for the reported events the Judges conclude threaten the ongoing operations of their courts; it would likewise fail to adequately address their concerns about treatment of court staff and others accessing court services." May 4 Order, at ¶ 98. In short, the Judges claim the inherent authority to do whatever they deem necessary even if it contravenes constitutional and statutory requirements.

This Court not surprisingly has clearly stated to the contrary: "the inherent power of a court does not allow a judge to sidestep an otherwise constitutional statutory process." S*tate ex rel. O'Diam v. Greene Cty. Bd. of Comm'rs*, 161 Ohio St.3d 242, 2020-Ohio-3503, 162 N.E.3d 740, ¶ 12. Furthermore, removal is a disfavored quasi-penal proceeding and its requirements are "strictly construed." *Bd. of Edn. v. Stringer*, 11th Dist. Trumbull Case No. 3664, 1986 Ohio App. LEXIS 6030, at *4 (Mar. 21, 1986), citing *McMillen v. Diehl*, 128 Ohio St. 212, 215, 190 N.E. 567 (1934) and *State ex rel. Corrigan v. Hensel*, 2 Ohio St.2d 96, 99, 206 N.E.2d 563 (1965).

The statutory requirement the Judges cite to excuse the denial of all due process is the requirement of a complaint signed by 15% of the electors in the most recent gubernatorial election (calculated by the Judges to require 14,271 signatures from Lake County voters). This requirement is not discretionary, but is mandated by the word "shall" contained in R.C. 3.08 ("proceedings for the removal of public officers … shall be commenced by the filing of a written complaint … signed by qualified electors.") "The word 'shall' is usually interpreted to make the

provision in which it is contained mandatory, especially if frequently repeated." *Dorrian v. Scioto Conservancy Dist*., 27 Ohio St.2d 102, 107, 271 N.E. 2d 834 (1971). The denial of this mandatory requirement not only deprives Ms. Andrews of a legal and constitutional safeguard, but constitutes a clear abuse of judicial power at the expense of the voters.

The Ohio Constitution, Article IV, Section 4, limits the jurisdiction of the Courts of Common Pleas "to justiciable matters." Without a complaint brought by the voters, there was not justiciable controversy conferring jurisdiction to remove Ms. Andrew from her elected office. "'Jurisdiction' means the courts' statutory or constitutional power to adjudicate the case." *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E. 2d 992, ¶ 11. Plainly and unambiguously, the Judges lacked statutory or constitutional power to adjudicate a case lacking in the complaint required by the Ohio Constitution and the signatures of voters to the complaint at the least mandated by statute. See *2867 Signers of Petition etc. v. Mack*, 66 Ohio App.2d 79, 419 N.E.2d 1108 (9th Dist.1979) (discussing the requirements of both signatures and a valid complaint to commence an action to remove a public official); *State v Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E. 2d 1025, ¶ 1 ("We hold that a complaint that meets the requirements of Crim. R. 3 invokes the subject-matter of a trial court"). Here, there was no complaint. Accordingly, the Judges lacked not only subject-matter jurisdiction[5] over the dispute but personal jurisdiction over Ms. Andrews. *See Pratts* at ¶ 11 (the term "jurisdiction" "encompasses jurisdiction over the subject matter and over the person … it is a condition precedent to the court's ability to hear the case.") (internal quotation omitted).

[5] As R.C. 3.08 expressly only confers standing upon the voters to bring a removal action, the Judges patently lack authority to do so and the court lacks jurisdiction. *See, Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 18, 2012-Ohio-5017, 979 N.E. 2d 1214 (2012) ("standing to sue is required to invoke the jurisdiction of the common pleas court").

The Judges further exercised power unauthorized by law in removing Ms. Andrews and making findings against her without affording her the opportunity to be heard guaranteed by the Ohio Constitution, *State ex rel. Hoel*, 105 Ohio St. at 487 (all Ohio officers guaranteed due process "which hears before it condemns"), and the right to trial by jury guaranteed by statute. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E. 2d 420, ¶ 31 (the right to trial by jury "serves as one of the most fundamental and long-standing rights in our legal system…it was '[d]esigned to prevent government oppression and to promote the fair resolution of issues.'") (citation omitted). Without affording a trial or other due process, we can have no confidence in the outcome.

In short, the Judges' usurpation of the electors' role as plaintiff and the people's role as jury is a wholesale denial of due process and a flagrant exercise of power unauthorized by law. The Judges claim a necessary expediency and an inherent authority to override the clear dictates of the Constitution and Ohio law (despite the fact that R.C. 3.08 provides for a hearing "within thirty days"). This is a rejection of the rule of law. As the Supreme Court famously observed, "[j]udicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the Legislature, or in other words, to the will of the law." *Osborn v. President, Dirs. & Co. of Bank*, 22 U.S. (9 Wheat.) 738, 866, 6 L.Ed. 204 (1824).

3. *The Orders Constitute Unlawful Prior Restraint In Violation of First Amendment Rights*

Finally, the Judges further demonstrated the breadth of their disregard for basic constitutional rights in imposing a gag order providing that "the clerk shall not make public statements or accusations about allegations she may have about criminal or other illegal activities occurring within the office of the Clerk of Courts, or by predecessors in the office of the Clerk of

Courts, unless in consultation with or requested by, the prosecutor's office or law enforcement as part of a bona fide investigation." March Journal Entry, at ¶ 46. This gag order is a "prior restraint": a judicial order that "operate(s) to forbid expression before it takes place." *State ex rel. Toledo Blade Co. v. Henry Cty Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, 926 N.E.2d 634, ¶ 20. "[P]rior restraints on speech [] are the most serious and least tolerable infringement on First Amendment rights." *Id*., quoting *Tory v. Cochran*, 544 U.S. 734, 738, 125 S.Ct. 2108, 161 L.Ed.2d 1042 (2005). "Prior restraints are simply repugnant to the basic values of an open society." *Id*. (citation omitted). Moreover, the restraint here is particularly egregious because it gags public statements about illegal activity in government, a subject recognized to be a matter of public concern. *See Whitney v. City of Milan*, 677 F.3d 292, 297 (6th Cir. 2012). (collecting cases supporting that speech concerning allegations of corruption or misconduct in government involves a matter of public concern.)

After the filing of this action and no doubt advised by how indefensible this gag order was, the Judges tweaked it in the May 4 Order to only bar "unsupported public statements or accusations …" and not "where her statements are protected by state or federal law." May 4 Order, at ¶ 110. This revised gag order is still in context an unlawful prior restraint (without expiration date) with, at a minimum, a chilling effect on free speech regarding a matter of public concern. For to speak a concern, she risks a finding of contempt of court, previously defined to be punishable by imprisonment and fines. And who will determine if her statement is "supported," the same inherently conflicted judges who signed the March Journal Entry and the May 4 Order and who have denied her due process of law and basic fairness? Who will decide whether Ms. Andrews public statements are "expressly protected by state or federal law?" Those

same Judges who either believed an obviously "repugnant" prior restraint was lawful or simply did not care.

Furthermore, the May 4 Order contains other directives without expiration that suppress free speech such as any speech about "any person or officer" of the court which is "denigrating" or "demeaning." May 4 Order, at ¶ 122.[6] By these terms, Ms. Andrews is gagged from criticizing any employee or publicly responding to the allegations made against her.

There can be no dispute that the Judges' have abused their authority in gagging Ms. Andrews, and the Judges do not even address the allegations in moving to dismiss.

4. *Ms. Andrews Need Not Demonstrate the Lack of An Adequate Remedy*

As to the third and final element, the Judges contend that Ms. Andrews has an adequate remedy in other legal actions. However, demonstrating the lack of an adequate remedy is unnecessary where, as here, "the court patently and unambiguously lacks jurisdiction to act." *State ex rel. Koren v. Grogan*, 68 Ohio St.3d 590, 595, 629 N.E. 2d 446 (1994); accord *Fiser* at ¶ 11 (the second and third elements of a petition for a writ of prohibition may be satisfied by showing that the lack of jurisdiction is patent and unambiguous); *State ex rel. Mfg. Corp. v. Ohio Civil Rights Comm'n*, 63 Ohio St.3d 179, 180, 586 N.E. 2d 105 (1992) ("we may grant a writ of prohibition if a judicial or quasi-judicial tribunal patently and unambiguously lacks jurisdiction, despite a relator's having an adequate remedy of law.)

As set forth above, the Judges not only lacked authorization under law, they "patently" and "unambiguously" lacked jurisdiction to enter orders in a non-existent case styled "Lake County Court of Common Pleas, plaintiff vs. Defendant, Case No. 22AA000001. Andrews Aff., Exhibit I. Moreover, they plainly lacked jurisdiction to make findings and issue orders in a

[6] The Judges' concern for "denigrating" or "demeaning" statements does not extend to their statements about Ms. Andrews in the March Journal Entry and May 4 Order.

fictitious action wherein they were the listed adverse party. Furthermore, they certainly lacked jurisdiction to remove Ms. Andrews from her elected office and reassign her day-to day oversight without a complaint endorsed by the required number of electors, to deny the trial by jury required under law, or even the opportunity to be heard. Finally, the Judges patently and unambiguously lacked jurisdiction to issue gag orders against Ms. Andrews in violation of the First Amendment.

5. *There Is No Adequate Remedy*

Even if the Judges did not patently and ambiguously lack jurisdiction – which in fact they did and do lack – Ms. Andrews can demonstrate that there is no adequate remedy. To be adequate, an available remedy must be "adequate under the circumstances of the case," *State ex rel. Cody v. Toner*, 8 Ohio St.3d 22, 23, 456 N.E. 2d 813 (1983), and be "complete in nature, beneficial, and speedy." *State ex rel. Yeaples v. Gall*, 141 Ohio St.3d 234, 2014-Ohio-4724, 23 N.E.3d 1077, ¶ 33.

Here, the Judges claim that Ms. Andrews has an adequate remedy at law in a direct appeal. This is plainly not the case. The March Journal Entry is conceded by the Judges not to be a final order (they even wrongly characterize it as a draft). Following the service upon her in court of this document, she filed this action for a writ of prohibition against the shocking directives in this Journal Entry. Barred from her elected office (except one day a month), denied any opportunity to be heard, formal or informal, and gagged from certain public speech. Ms. Andrews understandably sought a writ of prohibition rather than waiting for a final appealable order.[7]

[7] Given the level of animus demonstrated by the Judges against Ms. Andrews, she should not be expected to force a finding of contempt to seek appellate review. By the express terms of the March Journal Entry and the May 4 Order, such a gambit would result in her arrest and imprisonment while she hoped some higher court would intervene.

The Judges claim that the May 4 Order – journalized only after Ms. Andrews filed this original action – created an adequate remedy in the form of a direct appeal. This is not correct. The availability of an adequate remedy is determined at the time of the filing of the action for extraordinary relief. *N. Ohio Patrolmen's Benevolent Assn. v. Cty. of Cuyahoga*, 8th Dist. Cuyahoga No. 49656, 1985 Ohio App. LEXIS 8856, at *5 (Oct. 17, 1985), citing 41 Ohio Jurisprudence 3d 308, Equity Sec. 205. Because the Judges do not claim a final appealable order at the time of filing of this original action, a direct appeal would not be an adequate remedy.

Furthermore, the May 4 Order – journalized only after the filing of this action – is not a final appealable order. "A judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order." *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, 816 N.E.2d 597, ¶ 4, quoting *Bell v. Horton*, 142 Ohio App.3d 694, 696, 756 N.E. 2d 1241 (2001). The May 4 Order not only fails to indicate that it is a final judgment, but expressly "contemplates…further action." It states that the courts will be in an ongoing and regular state of evaluating "whether the conduct, climate and concerns outlined in this Entry have improved to a sufficient degree to warrant modification of its terms." May 4 Order, at ¶ 136. It further contemplates the issuance of "subsequent Journal Entries to identify relevant changes to the circumstances outlined above, as well as an analysis of whether the directives within this Entry are ripe for modification." *Id*. at ¶ 137. Accordingly, had Ms. Andrews taken a direct appeal from this Order, it would have been surely dismissed for lack of appellate jurisdiction. *In re E.H.*, 10th Dist. Franklin No. 15AP-680, 2016-Ohio-1186, ¶ 25 (a court order leaving a matter "open for further review" does not constitute a final appealable order).

Even if Ms. Andrews had a direct appeal – which she does not – it would not be "complete, beneficial, and speedy." *State ex rel. Beane v. City of Dayton*, 112 Ohio St.3d 553, 2007-Ohio-811, 862 N.E.2d 97, ¶ 31. First, with the finite term of her elected office ticking down, the importance of a "speedy" remedy is all the more important. A direct appeal may take more than a year or longer.[8] Second, while up on appeal or even after a successful appeal, the Judges can continue to issue orders based on claimed additional information from unnamed sources which is in fact what they indicate they will do. May 4 Order at ¶ 137. An extraordinary writ is necessary to bring closure to this unfortunate dispute.

6. *The May 4 Order Does Not Moot This Action for a Writ of Prohibition*

The Judges also suggest that by filing the May 4 Order, they mooted the action for a writ of prohibition because the act sought to be prevented had been completed. Motion to Dismiss at p. 26. This is not a correct statement of law. This Court has repeatedly recognized that a writ of prohibition applies where respondent "is about to *or has exercised* judicial or quasi-judicial power." *Fiser* at ¶ 7 (emphasis added), quoting *Balas-Bratton* at ¶ 15; accord *State ex rel. Rogers v. Brown*, 80 Ohio St.3d 408, 410, 1997-Ohio-334, 686 N.E.2d 1126 (court of appeals erred in holding journalization of entry mooted complaint for a writ of prohibition because prohibition will lie to prevent future events and to correct "previous jurisdictionally unauthorized actions.") Furthermore, as the Judges themselves indicate an intention to file additional orders, a writ of prohibition for prospective relief remains an issue. May 4 Order at ¶ 137.

[8] The Court's interactive dashboards for the Courts of Appeals indicate that the "overall time standard for all case types is 210 days from appeal filing to the release of the opinion…" See State of Ohio Court Statistics, https://www.supremecourt.ohio.gov/JCS/courtSvcs/dashboards/default.asp (visited June 23, 2022).

Because Ms. Andrews has sufficiently alleged the elements entitling her to a writ of prohibition, the Motion to Dismiss should be denied as to this claim.

C. The Complaint States A Valid Claim for a Writ of Mandamus

In the Amended Complaint, Ms. Andrews requested a writ of mandamus. *Id.*, ¶¶ 56-66. To be entitled to the writ, she must present evidence that she has a clear legal right to the requested relief; respondents have a legal duty to provide it; and Ms. Andrews lacks an adequate remedy in the course of the law. *State ex rel. Brubaker v. Lawrence Cty. Bd. of Elections*, 2022-Ohio-1087, ¶ 9.

1. *Ms. Andrews Has a Clear Legal Right to Have the March Journal Entry and the May 4 Order Vacated And The Respondents Have An Obligation To Provide It*

The Judges generally contend that Ms. Andrews does not have a clear legal right to vacate an order implicating "judicial discretion." As an initial matter, the Judges fail to cite any case in which the "judicial discretion" concept was utilized in the context of the purportedly "administrative" orders issued here.

Regardless, for the reasons described in Section III(B)(2)-(4) above, the impact of the March Journal Entry and the May 4 Order are outside any judicial discretion. When a court lacks judicial discretion, mandamus will issue to require vacating the order. *State ex rel. Leis v. Outcalt*, 1 Ohio St.3d 147, 150, 438 N.E.2d 443 (1982).

The whole concept of "judicial discretion" as a bar to mandamus here is a red herring. Judicial discretion has been defined in Ohio as "the option which a judge may exercise between the doing and not doing of a thing which cannot be demanded as an absolute legal right, guided by the spirit, principles and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case." *Krupp v. Poor*,

24 Ohio St.2d 123, 265 N.E.2d 268 (1970). Judicial discretion ***implies the existence of a case.*** There simply is not one here.

Were there any question on the issue, in the recently issued *State ex rel. Cin. Enquirer v. Shanahan*, 2022-Ohio-448, 185 N.E.3d 1089, ¶ 28, this Court reviewed *de novo* the factual findings under a Sup.R. 45 decision sealing an affidavit from public access. The trial court argued that judicial discretion controlled its decision in the sealing matter. This Court ultimately issued the mandamus order, requiring the trial court to release the document to the public.

This Court appropriately overruled the trial court's discretion which required a written decision finding by "clear and convincing evidence" a series of factors and a hearing if requested. Sup.R. 45(E). Here, the Judges made factual findings based off of nothing reported under oath or subject to cross-examination. This Court clearly has the province to review such unsupported factual findings to determine whether mandamus should require vacating the applicable orders, or to order the due process required under law.

2. *Ms. Andrews Lacks An Available Remedy Which Should Foreclose A Writ of Mandamus*

As with the writ of prohibition, the Judges argue that there is an adequate remedy in a direct appeal from the May 4 Order. As set forth above, this argument fails because (1) the availability of an adequate remedy is determined as of the time of filing of this original action; (2) the May 4 Order is not a final appealable order because it expressly contemplates further action and orders from the court; and (3) direct appeal does not constitute a "complete, beneficial, and speedy" remedy. *See State ex. rel. Ferreri*, 70 Ohio St.3d 587, 592, 639 N.E. 2d 1189 (1994). The authority and argument in support of these grounds is cited above and incorporated herein.

The Judges also argue that Ms. Andrews has an adequate remedy in a declaratory judgment action. This is not the case. The filing of such an action would not be substantially certain to be "complete, beneficial, or "speedy." After all, where would such an action be filed? To file it in a neighboring county in an effort to draw an independent judge would invite a motion to dismiss for lack of venue. To file in Lake County would risk a time consuming and uncertain fight to disqualify the Judges from litigating a matter in which they are obviously hostile and conflicted. Any inclination to assume that the Judges would recuse themselves must be re-examined in light of the provision in the May 4 Order providing for an inherently conflicted panel of the Respondent Judges to determine whether Ms. Andrews should be held in contempt. *See* May 4 Order, at ¶¶ 132, 133.

All of these issues would open up a variety of opportunities for the Judges to take appeals that like a direct appeal would expend at least a year, if not longer, of her remaining term in office. And, if Ms. Andrews somehow obtained a declaratory judgment stating the obvious – that the Judges are acting in violation of constitutional and statutory mandated process -- would the Judges even obey it or just take another appeal to exhaust time?

On this point, this Court has repeatedly recognized that a declaratory judgment "is not an appropriate basis to deny a writ to which the relator is otherwise entitled." *State ex rel. Huntington Ins. Agency v. Duryee*, 73 Ohio St.3d 530, 537, 1995-Ohio-337, 653 N.E. 2d 349 (1995) (collecting authority). Where no declaratory action is already pending, a merely available action to declare rights is not an adequate remedy.[9] *Id.*

[9] Nor does the combination of a declaratory judgment action with an injunction qualify as an adequate remedy since an injunction is itself considered an extraordinary remedy. *Huntington Ins. Agency*, 73 Ohio St.3d at 537, citing *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133, 568 N.E. 2d 1206 (1991) (remaining citations omitted).

At the pleadings stage, Ms. Andrews has sufficiently alleged all of the elements entitling her to a writ of mandamus. Dismissal is inappropriate.

D. The Complaint States A Valid Claim For A Writ Of Quo Warranto

The Judges further challenge Ms. Andrews petition for a writ of quo warranto. As the Judges acknowledge, this writ issues when the relator establishes that another person has unlawfully usurped the relator's public office. *See* R.C. 2733.06; *Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 23.

The Judges' argument to dismiss the claim for a writ of quo warranto appears entirely based upon mischaracterizing Ms. Andrews' allegations. After acknowledging that Ms. Andrews alleged that the Judges removed her from her elected office in violation of the removal procedures and due process of law (Motion to Dismiss at p. 47), the Judges ignore these allegations, claiming that "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." *Id*. at p. 48. This is far from a fair characterization. As alleged in the Amended Complaint and stated in the plain text of the March Journal Entry and May 4 Order, which orders the Judges do not want this Court to actually read, the Judges ordered Ms. Andrews not to be present in the Courthouse except one day a month under armed guard, stripped her of her right to supervise her staff, and reassigned her oversight of the day-to-day operations of the court. May 4 Order at ¶¶ 100, 111, and 107. Any reasonable person subject to these directives would understand that they had been effectively removed from their elected position.

Moreover, as alleged in the Complaint, it is the Judges themselves who have usurped Ms. Andrews' position, including the supervision of her staff. Amended Complaint at ¶ 80. Accordingly, Ms. Andrews states a valid claim for a writ of quo warranto and the Motion to Dismiss should be denied.

IV. CONCLUSION

This case involves an unprecedented and unauthorized abuse of judicial authority by common pleas court judges to control the Clerk of the Court . The scope and breadth of the orders both threatened and issued has no readily ascertainable equivalent. Hamstrung in the performance of her duties and threatened with contempt for even revealing the existence of the administrative proceedings, Ms. Andrews brought this action seeking judicial review.

The Judges respond not by welcoming the inquiry as to the lawfulness of their orders on the merits as would be appropriate under the Rules of Judicial Conduct and the universal goal of promoting confidence in the judiciary, but instead by making hypertechnical and unfounded arguments that the action should be dismissed.

The Judges' positions are internally inconsistent and incompatible with the traditional notions of due process under Ohio law. The Judges' positions, if correct, would be that they can receive allegations of wrongdoing or misuse of the Clerk's office and enforce administrative orders relating to those factual allegations without referring it to an appropriate investigative body, **or even providing due process or an opportunity to be heard**. In response to the First Amended Complaint, seeking issuance of writs of prohibition, mandamus, and quo warranto to resolve the novel issues, the Judges simultaneously argue that it must be dismissed because: (1) there was a final appealable order despite there being no case brought against Ms. Andrews; (2) that there could be a final appealable order if she receives a criminal contempt order for failing to comply with their orders; and (3) that an action for declaratory relief brought required to be brought in the court that issued the challenged orders is the appropriate vehicle to challenge the legality.

It is clear that the Judges do not want an effective review of their actions – they directly state as much in the Motion. This is completely contrary to Article I, Section 16 of the Ohio

Constitution, which provides that "all courts shall be open, and every person…shall have remedy by due course of law, and shall have justice administered without denial or delay."

At this stage of the proceeding, Ms. Andrews has sufficiently alleged the entitlement to each of the requested writs. The Motion to Dismiss should be denied.

Respectfully submitted,

/s/ L. Bradfield Hughes
L. Bradfield Hughes (No. 0070997)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2053 (Tel.)
(614) 227-2100 (Fax)
bhughes@porterwright.com

Edmund W. Searby (No. 0067455)
(COUNSEL OF RECORD)
Kevin J. Kelley (No. 0077707)
PORTER WRIGHT MORRIS & ARTHUR LLP
950 Main Avenue, Suite 500
Cleveland, OH 44113-7201
(440) 443-9000 (Tel.)
(440) 443-9011 (Fax)
esearby@porterwright.com
kkelley@porterwright.com

Counsel for Relator Faith Andrews, Clerk

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following counsel for the Respondents named in Relator's original Complaint were served with the foregoing via electronic mail on June 24, 2022:

Linda L. Woeber
MONTGOMERY JONSON LLP
lwoeber@mojolaw.com

Kimberly V. Riley
kriley@mojolaw.com

Counsel for Respondents

/s/ L. Bradfield Hughes
L. Bradfield Hughes