

# IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.	:	Case No.	2018-0865
DERRICK MARTIN KING,	:		
	:		
Relator	:		<i>Original Action in Prohibition</i>
	:		
vs.	:		
JUDGE JASON THOMAS WELLS,	:		
	:		
Respondent	:		

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## **RELATOR'S RESPONSE TO MOTION TO DISMISS**

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*Counsel for Respondent  
Judge Jason Thomas Wells*

Now comes your relator DERRICK MARTIN KING, appearing pro se, and he submits a formal response to Respondent's motion to dismiss (filed July 13, 2018). Relator submits that the motion to dismiss is not well taken or supported by law and should be denied.

**MEMORANDUM IN SUPPORT OF DENIAL OF MOTION TO DISMISS**

There has been a multitude of cases filed with respect to the termination of Relator's Disability Financial Assistance benefits. See Derrick Martin King v. Patricia L. Divoky, et al., Summit C.P. No. CV-2017-08-3304 (declaratory judgment action challenging the constitutionality of 2017 Am. Sub. H.B. No. 49, 2017 Ohio Laws File 14, filed August 8, 2017); Derrick Martin King v. Ohio Department of Job and Family Services, Summit C.P. No. CV-2017-09-3744 (judicial review of agency decision, filed September 8, 2017); Derrick Martin King v. Patricia L. Divoky, et al., 9<sup>th</sup> Dist. Summit No. 28841 (appeal of trial court's entry of dismissal in the declaratory judgment action)<sup>1</sup>; Derrick Martin King v. Ohio Department of Job and Family Services, 9<sup>th</sup> Dist. Summit No. 28816 (interlocutory appeal of Respondent's denial of several motions)<sup>2</sup>.

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<sup>1</sup> On June 13, 2018, the Ninth District reversed the trial court's dismissal of the case, holding that "that the court did not review Mr. King's complaint under the correct standard" and that they "cannot say that the trial court's dismissal of Mr. King's complaint was harmless error." King v. Divoky, et al., 9<sup>th</sup> Dist. Summit No. 28841, 2018-Ohio-2280, at ¶¶ 5, 6.

<sup>2</sup> On December 28, 2017 the Ninth District dismissed the interlocutory appeal, holding that the orders do not preclude effective relief later. Derrick Martin King v. Ohio Department of Job and Family Services, 9<sup>th</sup> Dist. Summit No. 28816 (entry of dismissal). On May 15, 2018 this Court declined jurisdiction over this case. Derrick Martin King v. Ohio Department of Job and Family Services, \_\_\_ Ohio St.3d \_\_\_, 2018-Ohio-1600, \_\_\_ N.E.2d \_\_\_ (2018).

It should also be noted that Relator was defeated in his bid to retain the seat following his appointment by the Governor. This is in large part to Respondent's utter incompetence in the performance of his duties and the lack of support from his political party.<sup>3</sup>

### **LAW AND ARGUMENT**

- A. Respondent does not have the authority to exercise jurisdiction over this case due as the proper method to challenge the constitutionality of a state statute is through a declaratory judgment action.

Respondent has continued to assert jurisdiction over a challenge to the constitutionality of Am. Sub. H.B. No. 49, 2017 Ohio Laws File 14. Respondent was also aware that there was a previously filed declaratory judgment action that has priority over the administrative appeal.

This Court has held that administrative bodies have no authority to interpret the Constitution, requiring litigants to assert constitutional arguments administratively would be a waste of time and effort for all involved. "[I]f resort to administrative remedies would be wholly futile, exhaustion is not required." Karches v. City of Cincinnati, 38 Ohio St.3d 12, 17, 526 N.E.2d 1350, 1355 (citing Glover v. St. Louis-San Francisco Railway Co.,

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<sup>3</sup> It also is apparent that Respondent has a protector in the Chief Justice of this Court. The Chief Justice ruled on an affidavit of disqualification filed regarding Respondent. The Chief Justice ruled on the affidavit of disqualification despite the fact that she served as Summit County Prosecutor during a period of time when Relator had a legal action pending in a criminal case in Summit County while the Chief Justice was the Prosecutor. Despite a clear conflict, the Chief Justice has ignored her duty and ruled on the affidavit of disqualification. Relator has filed a complaint with the Disciplinary Counsel although it is highly likely that the Disciplinary Counsel will refuse to do his job because it involves the Chief Justice. If the Chief Justice actually has integrity, she would recuse herself from further proceedings in this case.

393 ·U.S. 324, 89 S. Ct. 548, 21 L.Ed.2d 519 (1969); Driscoll v. Austintown Assoc., 42 Ohio St.2d 263, 275, 328 N.E.2d 395,403.

In addition, this Court has consistently held that challenges to new legislation are to be brought as declaratory judgments in common pleas court. State ex rel. Grendell v. Davidson, 86 Ohio St.3d 629, 1999-Ohio-130.

B. The administrative appeal in this case would be futile as Relator is not permitted to present additional evidence in support of challenging the constitutionality of 2017 Am. Sub. H.B. No. 49, 2017 Ohio Laws File 14.

If Relator asserts jurisdiction over the administrative appeal, Relator is faced with an impossible task. A facial challenge is the most difficult to bring successfully because the challenger must establish that there are no circumstances under which the statute would be valid. Harrold v. Collier, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, at ¶ 37. Where statutes are challenged as applied to a particular set of facts, the challenger bears the burden of presenting clear and convincing evidence of a presently existing set of facts that make the statutes unconstitutional and void when applied to those facts. Id.

As indicated, there is a pending declaratory judgment action that has priority over the administrative appeal action. Thus, Respondent does not have jurisdiction over the case.

### **CONCLUSION**

Relator has shown by clear and convincing evidence that his constitutional challenge to 2017 Am. Sub. H.B. No. 49, 2017 Ohio Laws File 14 should proceed as a declaratory judgment action. In addition, it is undisputed that Relator's declaratory

judgment action was pending PRIOR to the filing of the judicial review of administrative agency decision. Thus, Respondent has no jurisdiction over the case.

For the reasons stated herein, Relator prays that this Court deny the motion to dismiss and grant the writ of prohibition.

Respectfully Submitted,

*/s/ Derrick Martin King*  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response to the Motion to Dismiss was sent via electronic mail service to the following parties on this 13<sup>th</sup> day of July, 2018:

Marrett Willis Hanna (0065689)  
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*Attorney for Respondent*  
*Judge Jason Thomas Wells*

*/s/ Derrick Martin King*  
**DERRICK MARTIN KING**