

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.)	CASE NO. 2018-1801
SHEILAGH ROTH, et. al.)	
Relators,)	Original Action in Prohibition and
)	Mandamus Arising from Cuyahoga
VS.)	County Common Pleas Court Case No.
EIGHTH DISTRICT COURT OF)	CV-11-768767 and Eighth District
APPEALS, et. al.)	Court of Appeals Case No. CA-15-103714
Respondents.)	
)	

**RELATORS' MEMORANDUM IN RESPONSE TO RESPONDENTS CUYAHOGA
COUNTY COMMON PLEAS COURT, HON. BRIAN J. CORRIGAN, AND NAILAH K.
BYRD'S MOTION TO DISMISS**

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Common Pleas Court, Hon. Brian J.
Corrigan, and Nailah K. Byrd*

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.)	CASE NO. 2018-1801
SHEILAGH ROTH, et. al.)	
Relators,)	Original Action in Prohibition and Mandamus Arising from Cuyahoga County Common Pleas Court Case No. CV-11-768767 and Eighth District Court of Appeals Case No. CA-15-103714
VS.)	
EIGHTH DISTRICT COURT OF APPEALS, et. al.)	
Respondents.)	<u>RELATORS' MEMORANDUM IN RESPONSE TO RESPONDENTS' MOTION TO DISMISS</u>
)	
)	

NOW COME Relators Sheilagh Roth, Bradford Gaylord, English Nanny & Governess School, Inc., and English Nannies, Inc., by and through undersigned counsel, and pursuant to S.Ct.Prac.R. 12.04(B)(2) respectfully move this Court for an Order denying Respondent Cuyahoga Common Pleas Court, Hon. Brian J. Corrigan, and Nailah K. Byrd's Motion to Dismiss Relators' Complaint in Prohibition and Mandamus.

A memorandum in support of this motion is attached hereto and incorporated herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction.

Realtors are entitled to writs of mandamus and prohibition because the Respondents patently and unambiguously exceeded their subject matter jurisdiction in Cuyahoga County Common Pleas Court Case Number CV-11-768767¹ and Cuyahoga County Court of Appeals, Eighth Appellate District Case Number CA-15-103714² (hereinafter the “underlying civil actions” or “underlying tort actions.”) Respondent Nailah K. Byrd, the Cuyahoga County Clerk of Courts, meanwhile, is in possession of a \$329,158.00 cash bond (Number 670264) posted by Relator Sheilagh Roth on November 6, 2015 as security for the underlying—and unlawful—Common Pleas court judgment. Without extraordinary relief in prohibition and/or mandamus, Relators fear that Respondents will continue to exercise subject matter jurisdiction over the underlying civil proceedings in violation of Ohio statutory law, the Commonwealth of Pennsylvania’s sovereign and independent child abuse reporting statute, and the due process clause of the Fourteenth Amendment to the United States Constitution.

As Relators have demonstrated in their Complaint, verified affidavits, and Memorandum in Support attached to the Complaint pursuant to S.Ct.Prac. R. 12.02(B), Respondents patently and unambiguously lack subject matter jurisdiction to take further action in the underlying civil action, Relators lack an adequate remedy at law to halt such action, and are therefore entitled to the extraordinary relief in prohibition and mandamus.

II. Factual Background.

¹ That case is officially captioned *Christina Cruz, et. al. v. English Nanny & Governess School, et. al.*

² That case is officially captioned *Christina Cruz, et. al. v. English Nanny & Governess School, Inc. [sic], et. al.*

In July 2011, New York citizen Christina Cruz (hereinafter “Cruz”) visited the Commonwealth of Pennsylvania home of a single father (hereinafter “V.W.”) and his two daughters for a three-day interview in the hopes of becoming the family’s “nanny” or caretaker. On the final evening of her stay, Cruz witnessed what she believed was an act of sexual abuse transpire between V.W. and his oldest daughter underneath a blanket. Cruz returned home to New York and reported the incident to Pennsylvania authorities pursuant to Pennsylvania’s child abuse reporting statute. In the ensuing months, Pennsylvania authorities conducted thorough criminal and child welfare investigations under the Commonwealth’s jurisdiction. At no point in the convoluted civil litigation that ensued in *Ohio* was it ever established that the children were permanently removed from V.W.’s home or that V.W. was convicted—much less arrested—for the *crime* of child sexual abuse.

Sheilagh Roth (hereinafter “Roth”) and Bradford Gaylord (hereinafter “Gaylord”) are Ohio citizens who never visited Pennsylvania, did not witness V.W.’s alleged abuse of his daughter, and were under no obligation to report the incident under either Ohio *or* Pennsylvania’s child abuse reporting statute. Their companies, English Nanny & Governess School, Inc. (hereinafter the “School”) and English Nannies, Inc. (hereinafter the “Placement Service” or “Service”) are Ohio small businesses located entirely within this state. The School trains students for child-care responsibilities via an intensive curriculum of classroom and hands-on practicum care. Graduates of the School become certified “nannies” or “governesses” and eligible for employment with families seeking childcare help. Roth, Gaylord, the School, and Placement Service’s sole connection with V.W. and the Commonwealth of Pennsylvania arose when V.W. engaged the Service in the hopes of hiring a nanny or governess for his family. Cruz graduated from the School in June 2011 and returned home to New York permanently on June

26, 2011. Cruz later travelled to Pennsylvania to interview with V.W. for his family’s nanny position from July 6-9, 2011.

Heidi Kaiser (hereinafter “Kaiser”) worked in the Service’s Placement Department for ninety days before being terminated on or about July 19, 2011. At the time of her termination, Kaiser was an Ohio resident but has since moved out-of-state. Kaiser was the first person Cruz informed of the alleged sexual abuse she witnessed in Pennsylvania. During all communications between Cruz and Kaiser, Cruz resided in the state of New York.

Nearly four years later, the civil implications of the alleged child abuse within the Commonwealth of Pennsylvania concerning citizens of New York and Pennsylvania, respectively, were litigated in a highly-publicized, month-long civil trial in *Ohio*.³ Rather than pursue V.W., the alleged abuser, for damages in Pennsylvania, plaintiffs Cruz and Kaiser turned to *Ohio* courts in an attempt to hold Roth Gaylord, the School, and Placement Service liable for an out-of-state alleged child abuse incident whose implications were governed entirely by the jurisdiction of the Commonwealth of Pennsylvania.

Even though Ohio law enforcement and child welfare authorities patently and unambiguously lacked jurisdiction over the alleged abuse of a Pennsylvania child in her father’s home, Plaintiffs nonetheless prosecuted tort claims in Ohio against Roth, Gaylord, the School, and the Service (collectively, the “Defendants”) based on *this* state’s public policy regarding mandatory child abuse reporting. Cruz accused the Defendants of intentional infliction of emotional distress for their reaction to her allegations and purported failure to arrange interviews with families in retaliation therefor.⁴ As will be fully demonstrated *infra*, neither Cruz, Kaiser,

³ See Christina Cruz, et. al. v. English Nanny & Governess School, et. al., Cuyahoga County Common Pleas Case Number CV-11-768767.

⁴ Cruz also pursued a breach of contract claim against the School and Service while the School counterclaimed for breach of contract regarding Cruz’s alleged failure to pay the balance of her tuition loan. As both of those actions

nor any of the Defendants were mandatory child abuse reporters under Ohio law. Ohio, moreover, maintains **no jurisdiction** over alleged child abuse occurring beyond this state's borders. Plaintiff Kaiser sued the Service for wrongful discharge in violation of Ohio public policy based on the Service's relationship to an event that occurred outside Ohio and was not governed by Ohio law.

Cruz and Kaiser's claims ultimately proceeded to a jury trial in the Cuyahoga County Common Pleas Court from May through June, 2015. In that case, the Common Pleas Court patently and unambiguously exceeded its subject matter jurisdiction by adjudicating tort claims whose existence and validity could **only** be adjudicated under Pennsylvania law. Defendants suffered a catastrophic jury verdict and appealed immediately to the Ohio Court of Appeals for the Eighth Appellate District.⁵ The Eighth District exceeded its jurisdiction by applying Ohio law to the parties' respective assignments of error concerning out-of-state occurrences within the civil and criminal jurisdictions of other states.

Near the end of the trial, the Honorable Visiting Judge Burt W. Griffin,⁶ addressed the obvious jurisdictional issues *sua sponte* with the parties. Judge Griffin made the following candid statements on the record to counsel for Plaintiffs and Defendants:

Court: Incidentally, what—what law applies?

Defense Counsel: It's Ohio law—oh, you mean—the law that applies with respect to the intentional infliction of emotional distress?

Plaintiff's Counsel: We don't dispute that [Ohio law applies].

were based on contracts executed in Ohio to which Ohio law applies, the Defendants do not challenge the trial and appellate courts' subject matter jurisdiction over those claims.

⁵ See Christina Cruz, et. al. v. English Nanny & Governess School, Inc., et. al. Eighth District Court of Appeals Case Number CA-15-103714.

⁶ The Honorable Judge Brian J. Corrigan assigned the Honorable Visiting Judge Burt W. Griffin to the Common Pleas action by order on January 27, 2015. Judge Griffin presided over the trial and all post-trial motions until a final, appealable order was issued on October 30, 2015.

Court: **Are you sure of that?**

Trial 2539:12-20. (Emphasis added). Visiting Judge Griffin expounded further upon the jurisdictional issue outside the presence of the jury:

You know, I think that it's interesting that you all believe this is governed solely by Ohio law, when the actions . . . that were related to disclosure, were going to occur in **Pennsylvania**.

[. . .]

I'll tell you, quite frankly, **I'm skeptical of your argument that Ohio governs this**, because the . . . thrust of everything that was going on here, the **victims were in Pennsylvania. And the conduct occurred in Pennsylvania**, although the witnesses—the witness, **the only witness was in New York**. And so **the public policy**, it does seem to me, that was being protected here, **emanated out of Pennsylvania**.

Ultimately, none of the parties contested the trial court's subject matter jurisdiction. Thus, the Common Pleas court never formally determined whether it could exercise jurisdiction over the matter. Nonetheless, Ohio civil law is clear that the lack of a court's subject matter jurisdiction may be raised at any point in litigation and **may never be waived**. *See Section III, infra.* It is therefore timely—and urgent—for this honorable Court to fully consider Judge Griffin's legitimate questions regarding this state's jurisdiction over Plaintiffs' claims.

III. **Relators' Complaint, verified affidavits, and Memorandum in Support (attached to the Complaint per S.Ct.Prac.R.12.02(B)(1)) state a sufficient factual and legal predicate for their entitlement to writs in prohibition and mandamus, and Respondents' Motion to Dismiss should be denied.**

A. Legal Standard.

1. Mandamus and Prohibition.

The elements under Ohio law to obtain a writ of prohibition are “the exercise of judicial power, the lack of authority for the exercise of that power, and the lack of an adequate remedy in

the ordinary course of law.” *State ex rel. Ford v. Ruehlman*, 149 Ohio St.3d 34, 2016-Ohio-3529, ¶61, citing *State ex rel. Elder v. Campese*, 144 Ohio St. 39 89, 2015-Ohio-3628, ¶14.

Mandamus is a writ, issued in the name of the state, to an inferior tribunal . . .

commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.” O.R.C. Section 2731.01. To be entitled to a writ in mandamus, Relators must establish that they have a clear legal right to the performance of an act that is required by law, the respondents are under a clear legal duty to perform the act, and the relators have no plain and adequate remedy in the ordinary course of the law. *State ex rel. Ohio CIV. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶9.

For reasons that follow, Relators maintain that they have pled sufficient facts demonstrating Respondents’ patent and unambiguous lack of subject matter jurisdiction and are therefore entitled to writs in mandamus and prohibition.

2. Standard for Motion to Dismiss.

A motion to dismiss for failure to state a claim upon which relief may be granted is procedural and tests the sufficiency of the Complaint. *State Auto Mut. Ins. Co. v. Titanium Metals Corp.*, 108 Ohio St.3d 540, 2006-Ohio-1713, 844 N.E.2d 1199, ¶8. “In order for a party to prevail on such a motion, it must appear beyond doubt from the face of the complaint that the plaintiff can prove no set of facts entitling him to relief.” *State ex. Rel. Midwest Pride IV, Inc. v. Pontious* (1996) 75 Ohio St.3d 565, 569, 644 N.E.2d 931. When considering a motion to dismiss, **a court must treat all factual allegations as true and make all reasonable inferences in favor of a non-moving party.** *Mitchell v. Lawson’s Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988) (emphasis added).

Respondent's Memorandum in Support of its Motion to Dismiss levels several factual allegations directly contradicted by Realtors' verified Complaint. For example, Respondents state that the "essence of the underlying action . . . was that relators owned and/or operated English Nanny & Governess School, Inc., a prestigious trade school that trained professional nannies and governesses." *See* Respondents' Memorandum in Support, page 2. Respondents' conclusory statement that Relators' operation of their trade school and placement service formed the "essence" of the underlying controversy is belied by the trial record, which contains numerous lurid references to an incident of alleged sexual abuse occurring across state lines in Pennsylvania. *See* Section II of Exhibit "C" to Relators' Complaint, Memorandum in Support, pages 4-27.⁷ Moreover, this alleged act of sexual abuse—together with its attendant criminal and child welfare implications—was governed exclusively by Commonwealth of Pennsylvania statutory law. *See* Footnote 43 (on page 27) to Exhibit "C" to Relators' Complaint. *See also* paragraph 29 to Relators' Complaint. In any event, this honorable Court is bound to accept the factual allegations in Relators' Complaint as true, and those allegations state—in no uncertain terms—that Plaintiffs' underlying tort claims were fundamentally intertwined with a single incident that took place in the Commonwealth of Pennsylvania on July 8, 2011. *See* Paragraph 19 of Relators' Complaint.

Respondents further minimize the underlying tort action's connection to the jurisdiction of Pennsylvania by classic understatement; Respondents note that "some factual events occurred in the State of Pennsylvania." *See* Respondent's Memorandum in Support, page 5. What respondents leave unstated is that these factual events—which were testified to by multiple witnesses, all but one of whom who were not present in Pennsylvania when they occurred—had

⁷ Relators incorporated the Memorandum in Support into paragraphs 19-39 of their Complaint per S.Ct.Prac.R. 12.02(B)(1). *See* Relators' Complaint for Writ of Prohibition and Mandamus, filed December 19, 2018.

no jurisdictional nexus with Ohio law. *See* paragraphs 29-31 of Realtors' Complaint.⁸ **None** of the relators are mandatory reporters under Ohio or Pennsylvania law. *See* paragraphs 27 and 29 of Realtors' Complaint. *See also* paragraph 16 to the verified affidavits of Relators Roth and Gaylord (Exhibits "A" and "B." respectively" to Relators' Complaint). The trial and appellate court's patent and unambiguous lack of subject matter jurisdiction over the tort actions below is not based merely on the contention "that some factual events" occurred across state lines; rather, it is that those events were governed entirely by Pennsylvania's sovereign and independent criminal and child welfare jurisdiction.⁹

Finally, Respondents present a misleading timeline of events adduced at trial and on the appeal below. On page 3 of their Memorandum in Support, Respondents state:

After returning to Ohio, Cruz told Kaiser on July 9 what she had seen, seeking guidance as to whether she should make a report to the outside agency. Kaiser told relators Roth and Gaylord on July 11 what Cruz had reported, but Roth and Gaylord reportedly directed that no report should be made.

These facts are not only directly contradicted by the record below, but by Relators' Complaint itself. Under *Mitchell v. Lawson's Milk Co.*, *supra*, this Court must accept the factual allegations in Relators' Complaint as true. Accordingly, Relators urge this honorable Court to reject Respondents' characterization of the factual record above. First, Cruz **never** returned to Ohio after the interview with V.W. in Pennsylvania. *See* paragraph 19 of Exhibit "A" to Realtors' Complaint (Relator Roth's verified Affidavit). Second, Relators Roth and Gaylord affirmatively **deny** that they were even aware that Cruz allegedly witnessed V.W. abuse his daughters in Pennsylvania when Plaintiff Kaiser was terminated on July 19, 2011. *See* Paragraph 17 of

⁸ *See also* Exhibit "C" to Relators' Complaint, Memorandum in Support Section II, pages 4-27.

⁹ *See* Footnote 43 (page 27) of Exhibit "C" to Realtors' Complaint. Pa C.S. 6311 applied to the abuse Cruz allegedly witnessed in the home of Pennsylvania resident V.W. Even if Relators conspired to "cover up" this incident of alleged abuse, Ohio tort law imposes no liability on

Exhibits “A” and “B” to Relators’ Complaint (the affidavits, respectively, of Relators Roth and Gaylord). For purposes of Respondent’s motion to dismiss, therefore, this honorable Court must reject Respondents’ misstatements of the factual record and accept Relators’ factual allegations in the Complaint as true.

B. Respondents’ Motion to Dismiss contains several conclusory statements denying that Respondents patently and unambiguously lack subject matter jurisdiction over the proceedings below. Respondents fail to even address the numerous bases for lack of subject matter jurisdiction raised in Relator’s Complaint and Memorandum in Support.¹⁰

At several points in their motion to dismiss, Respondents state, always in conclusory fashion, that the Common Pleas Court does not patently and unambiguously lack subject matter jurisdiction over the underlying litigation. *See, e.g.*, page 7 of Respondents’ Memorandum in Support (“the Complaint does not plead any facts suggesting that respondent Court patently and unambiguously lacked jurisdiction over the underlying civil action.”) Respondents likewise suggest that this honorable Court’s role in the within controversy is limited to determining whether the Common Pleas Court’s jurisdiction is patently and unambiguously lacking.¹¹ Respondents’ conclusory arguments, however, **fail to even address** the numerous defects in the Common Pleas Court’s jurisdiction identified in Exhibit “C” to Relators’ Complaint (a.k.a. Relators’ Memorandum in Support of their Writ). Those defects include the following issues, with specific reference to their discussion in Relators’ Memorandum in Support, attached to the Complaint pursuant to S.Ct.Prac.R. 12.02(B)(1):

Ohio maintains a sovereign and independent mandatory child abuse reporting system codified in O.R.C. Section 2151.421. By its own terms, the statute operates solely within Ohio. Section 2151.421(A)(1)(a) mandates that reporters contact

¹⁰ Relators’ Memorandum in Support was attached to Relators’ Complaint, labelled Exhibit “A” [sic] and incorporated into the Complaint via paragraphs 19-39 of the Complaint. Relators’ Memorandum in Support is in fact attached to the Complaint as Exhibit “C.”

¹¹ See page 6 of Respondents’ Memorandum in Support (“[w]hen reviewing a prohibition complaint, this Court need not decide the merits of the jurisdictional connection, for its ‘duty in prohibition cases is limited to determining whether jurisdiction is patently and unambiguously lacking.’”) (internal citations omitted).

authorities “in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.” O.R.C. Section 2151.421 is therefore patently and unambiguously **not** an extra-territorial statute subject to application in the Commonwealth of Pennsylvania. The Common Pleas Court therefore patently and unambiguously lacks subject matter jurisdiction to apply Ohio tort law to conduct in which the state of Ohio has no interest or authority. *See* Section II(A) of Realtors’ Memorandum in Support, pg. 5.

Even if O.R.C. Section 2151.421 applied to an alleged act of abuse in the *Commonwealth of Pennsylvania*, Relators are not mandatory reporters under the plain terms of O.R.C. Section 2151.421(A)(1)(b). Moreover, plaintiffs in the underlying litigation are not mandatory Ohio abuse reporters, either. *See id.*, pgs. 6-10; pgs. 12-14.

The criminal, civil, and child welfare implications of the abuse plaintiff Cruz allegedly witnessed directly implicate the jurisdiction of the Commonwealth of Pennsylvania. *See* Section II(C) of Relators’ Memorandum in Support, pgs. 21-27.

The *Restatement (Second) of Judgments* Section 12 provides, *inter alia*, that a court’s jurisdiction may be challenged even after the tribunal has rendered judgment in a matter if “the subject matter of the action was so plainly beyond the court’s jurisdiction that its entertaining the action was a manifest abuse of its authority” and “allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government.” *See* Section III(A)(2) of Relators’ Memorandum in Support, pgs. 29-31.

The *Restatement (Second) of Conflict of Laws* Section 9, which explicitly governs a court’s subject matter jurisdiction, provides that a “court may **not** apply the local law of its own state to determine the particular [underlying] issue unless such application of its law would be **reasonable** in light of the **relationship of the state to the person, thing, or occurrence involved**. *See* Section III(A)(3) of Relators’ Memorandum in Support, pgs. 31-33.

This honorable Court’s own century-long precedent limits the subject matter jurisdiction of Ohio courts over out-of-state occurrences governed by the laws of another jurisdiction. *Baltimore & O.R. v. Chambers*, 73 Ohio St. 16, 76 N.E. 91 (1905). In that case, this Court elaborated that “an action may only be brought and maintained in a jurisdiction other than that in which the cause of action arose, when the cause of action is transitory, and its enforcement not inconsistent with, or obnoxious to, the laws or public policy of the jurisdiction in which the suit is brought. *Id.* at 22. *See* Section III(A)(4) of Relators’ Memorandum in Support, pgs. 33-35.

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States explicitly voids the Common Pleas Court’s jurisdiction over the underlying matter. Pursuant to over a century of precedent most recently reaffirmed

in the United States Supreme Court decision of *Allstate Ins. Co. v. Hague* 449 U.S. 302, 101 S.Ct. 633 (1981), the Common Pleas Court patently and unambiguously lacked subject matter jurisdiction to apply Ohio tort law to events governed exclusively by the law of the Commonwealth of Pennsylvania. Specifically, “for a state’s substantive law to be selected in a constitutionally permissible manner, the State must have a **significant contact or aggregation of contacts**, creating **state interests**, such that choice of its law is neither **arbitrary** or **fundamentally unfair**.” *Id.* at 312-13. *See* Section III(B) of Relators’ Memorandum in Support, pgs. 36-43. In the within matter, Ohio patently and unambiguously lacks sufficient contacts or interests in relation to events that allegedly occurred outside its borders. Respondents’ application of Ohio tort law to the underlying action is therefore patently and unambiguously arbitrary and fundamentally unfair to Relators.

The United States Supreme Court has expanded the rationale of the *Hague* doctrine to determine that the Due Process Clause of the Fourteenth Amendment prevents state courts from applying local tort law to out-of-state conduct that is not unlawful in a defendants’ home state. In *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996), the United States Supreme Court stated that an Alabama trial court lacked power to punish defendants for conduct that had its effects across state lines: “Alabama does not have the power to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents.” *Id.* at 572. In *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 421, 123 S.Ct. 1513 (2003), the U.S. Supreme Court stated that “[a] state cannot punish a defendant for conduct that may have been lawful where it occurred . . . [l]aws have no force of themselves **beyond the jurisdiction** of the State which enacts them.” *See* Section III(B) of Relators’ Memorandum in Support, pgs. 36-43.

The Common Pleas Court patently and unambiguously lacked subject matter jurisdiction to apply Ohio tort law to an alleged act of sexual abuse in Pennsylvania because Ohio lacks the necessary “reasonable relationship” to matters governed by the Commonwealth’s independent statutory, regulatory, and law enforcement apparatus addressing child abuse within its borders. Moreover, Ohio courts lack jurisdiction to determine whether Relators’ conduct was “extreme and outrageous” under the intentional infliction of emotional distress tort when the nature of Relators conduct was relative to the Commonwealth of Pennsylvania’s child abuse reporting statute. *See* Section IV(A) of Relators’ Memorandum in Support, pgs. 43-51.

The Common Pleas court patently and unambiguously lacked subject matter jurisdiction to apply Ohio’s wrongful discharge in violation of public policy tort against Realtors because there was no evidence in the underlying case that Ohio law required Relators to take *any* action regarding the alleged child abuse in the Commonwealth of Pennsylvania. Moreover, as Relators are not mandatory reporters under Ohio’s child abuse reporting statute, *supra*, it was impossible for

Relators to have violated *Ohio* public policy in terminating Plaintiff Kaiser. *See* Section IV(B) of Relators' Memorandum in Support, pgs. 51-55.

It bears repeating that Respondents' Motion to Dismiss Relators' Complaint fails to even address these defects in Respondents' subject matter jurisdiction. Respondents' sole *affirmative* basis for establishing jurisdiction over the civil action below is the bare recitation of Ohio Revised Code Section 2305.01, which broadly states that courts of common pleas have "original jurisdiction in all cases in which the sum or matter in dispute exceeds the exclusive jurisdiction of county courts." *See* Respondents' Memorandum in Support, page 8. Even Respondents, however, acknowledge that this sweeping, general language may be circumscribed by independent authority, citing this honorable Court's decision in *Schucker v. Metcalf*, 22 Ohio St.3d 33, 488 N.E.2d 210 (1986). In that case, this Court stated that "[t]he court of common pleas is a court of general jurisdiction. It embraces all matters at law and in equity **that are not denied to it.**" *See id.* (Emphasis added).

Thus, Respondents concede that they may not exercise subject matter jurisdiction over the underlying civil action merely because O.R.C. Section 2305.01, a deliberately broad statute that applies to civil matters in general, grants the Court of Common Pleas jurisdiction over plaintiffs' civil action merely because the underlying amount in controversy exceeds that of other, inferior tribunals. Respondents furthermore state—incorrectly—that "[r]ealtors do not allege any facts that would cast doubt on the Ohio courts' authority to hear such claims." *See* Respondents' Motion to Dismiss, page 8. This is not true even after the most cursory examination of Relators' Complaint, verified affidavits, and Memorandum in Support, incorporated into the Complaint per S.Ct.Prac. R. 12.02(B)(1), all of which demonstrate that Relators have met their factual burden to survive Respondents' motion to dismiss.

Relators' Complaint, affidavits, and Memorandum in Support in fact highlight *several* independent factual bases that deny the Common Pleas court subject matter jurisdiction over the underlying civil action. Repeated at length in the indented portion on pages 11-14 of the instant Memorandum in Opposition, *supra*, these factual bases operate to **deprive** the Cuyahoga County Court of Common Pleas of subject matter jurisdiction over plaintiffs' intentional infliction of emotional distress and wrongful discharge in violation of public policy tort claims, respectively.

Respondents' Motion to Dismiss attempts to respond to Relators' jurisdictional objections by stating—again in conclusory fashion--that “[t]he mere fact that events occurring outside Ohio allegedly caused the [R]elators to engage in conduct that gave rise to the plaintiffs' claims for relief does not affect the jurisdiction of Ohio courts to adjudicate those claims for relief.” *See* Respondents' Memorandum in Support, page 8-9. This characterization of Relators' jurisdictional argument is at once simplistic and inaccurate. Relators never alleged that the “mere” fact that the alleged sexual abuse at the heart of plaintiffs' underlying claims took place outside Ohio deprived Ohio courts of jurisdiction over their claims. Rather, it was the existence of—and fundamental conflict between--Ohio and Pennsylvania's sovereign and independent mandatory child abuse reporting regimes that deprived the Cuyahoga County Common Pleas' court from applying Ohio tort law to an event that had no significant, overarching connection to the state of Ohio.

The lack of connection between the state of Ohio and alleged sexual abuse in Pennsylvania is significant for several reasons. First, Section 9 of the *Restatement (Second) on Conflict of Laws* recognizes that a court maintains subject matter jurisdiction to apply its own state's law only when there is a reasonable relationship between that law and the underlying transaction or occurrence. In this case, Ohio courts had no such reasonable relationship to an

alleged incident under the jurisdiction of the Commonwealth of Pennsylvania. Second, applying *Ohio* tort law to Relators' conduct in *Ohio* courts deprived the Commonwealth of Pennsylvania from enforcing and upholding its independent child abuse reporting statute—Pa. C.S. Section 6311. Section 12 of the *Restatement (Second) of Judgments* recognizes that one state's courts may not "substantially infringe the authority of another tribunal or agency of government."

Finally—and most importantly from the standpoint of Relators' rights under the United States Constitution—the Common Pleas court's exercise of subject matter jurisdiction over the within litigation deprived Relators of **due process of law**. The United States Supreme Court has long recognized that courts' subject matter jurisdiction over a particular litigants is limited by fundamental notions of fairness:

The forum State's interest in the efficient operation of its judicial system is clearly not sufficient . . . to justify the application of a law that is **fundamentally unfair** to one of the litigants . . . The application of an otherwise acceptable rule of law may result in unfairness to the litigants if, in engaging in the activity that is the **subject** of the litigation, they could not have reasonably anticipated that their actions would later be judged by this rule of law. A choice-of-law decision that frustrates the **justifiable expectations** of the parties can be **fundamentally unfair**.

Allstate Ins. Co., *supra*, at 312-13. More recently, the United States Supreme Court has elaborated on this principle of fairness to litigants in the context of a court's jurisdiction: "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a state may impose." *State Farm Mut. Ins. Co.*, *supra* at 417.

C. Even if this honorable Court accepts Respondents' argument that they maintain general jurisdiction of the civil action below, Relators are still entitled to a writ of prohibition because the Common Pleas Court has taken actions in excess of its statutory and Constitutional authority in the matter *sub judice*.

Even if this Court accepts Respondents' conclusory argument that the Common Pleas Court exercised general jurisdiction over the within matter pursuant to O.R.C. Section

2305.01, this Court must still inquire into whether Respondents took any actions in **excess** of that general authority throughout the trial and post-verdict proceedings. As stated in Section III(B), *supra*, Respondents purported exercise of jurisdiction over the matter below improperly involved the extra-territorial application of O.R.C. Section 2151.421, infringed on the Commonwealth of Pennsylvania's authority to enforce Pa. C.S. 6311, and deprived Realtors' of their Fourteenth Amendment rights to due process of law.

In *State ex. Rel. Ford v. Ruehlm*an, 149 Ohio St.3d 34, 2016-Ohio-3529, this Court granted a writ of prohibition to "prevent unauthorized exercise of judicial power and to vacate orders previously issued." This Court confirmed that when a lower court exceeds its statutory authority, writs of prohibition should be issued. Specifically, this Court found:

But even if a common pleas court has general jurisdiction over a case, **a writ of prohibition will issue when the court seeks to take an action or provide a remedy that exceeds its statutory authority**. *See State ex rel. Mason v. Griffin*, 104 Ohio St.3d 279, 2004-Ohio-6384, 819 N.E.2d 644, ¶¶ 12-16 (court had general jurisdiction over criminal case, but **writ of prohibition granted because judge patently and unambiguously lacked statutory or constitutional authority to hold a jury sentencing hearing in the case**); *State ex rel. Triplett v. Ross*, 111 Ohio St.3d 231, 2006-Ohio-4705, 855 N.E.2d 1174, ¶50 (municipal court had no statutory authority to require certain attorneys to declare their nonsupport of terrorist groups as a precondition for court appointments); *State ex rel. Adams v. Gusweiler*, 30 Ohio St.2d 326, 328-29, 285 N.E.2d 22 (1972) (common pleas court had **no statutory authority to appoint a second arbitrator**).

State ex rel. Ford, supra, at ¶69 (emphasis added). Thus even if the Common Pleas Court had general jurisdiction, relators are "entitled to a writ of prohibition to prevent the unauthorized exercise of judicial power." *Id.* at ¶70.

Likewise, in *State ex rel. Mason v. Griffin* 104 Ohio St.3d 279, 2004-Ohio-6384, 819 N.E.2d 644, this Court issued a writ of prohibition on the basis of a judge patently and unambiguously lacking statutory or Constitutional authority. *Id.* at ¶¶ 12-16. In that matter,

the presiding trial judge conducted a jury sentencing hearing in the underlying criminal case, alleged by Relator to be a non-statutory sentencing procedure. Relator filed a writ of prohibition “to prevent [Respondent] Judge Griffin ‘from creating or presiding over a non-statutory sentencing procedure by which a jury will make findings necessary to support certain sentences in [the individual Defendant’s] criminal cases.’” *Id.* at ¶6. This Court held the following:

For the following reasons, Judge Griffin patently and unambiguously lacks jurisdiction to hold a jury sentencing hearing, and [Relator] is entitled to a writ of prohibition.

Neither the Ohio Constitution nor any statute authorizes Judge Griffin to conduct a jury sentencing hearing. The Ohio Constitution does not confer jurisdiction on courts of common pleas; the Constitution instead provides that jurisdiction must be conferred on these courts by the General Assembly. Section 4(B), Article IV, Ohio Constitution (“The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies *as may be provided by law*” [emphasis added]); *In Re Seltzer* (1993) 67 Ohio St.3d 220, 222, 616 N.E.2d 1108; *Nielsen v. Ford Motor Co.* (1996) 113 Ohio App.3d 495, 499, 681 N.E.2d 470. (Emphasis added.) No statute authorizes Judge Griffin to convene a jury to make findings concerning sentencing in the underlying criminal cases.

State ex rel. Mason, supra at ¶14-15.

While the instant matter concerns two common law torts rather than a statutory provision as in *State ex rel. Ford* and *State ex rel. Mason, supra*, the principle remains that a court operating under a general jurisdictional statute may nonetheless exceed that authority by taking actions that are otherwise statutorily or Constitutionally impermissible. As highlighted in Section A, *supra*, the Common Pleas Court patently and unambiguously exceeded its subject matter jurisdiction by applying O.R.C. Section 2151.421 to allegedly tortious conduct that occurred in the Commonwealth of Pennsylvania. Furthermore, the Common Pleas Court violated Relators’ due process rights under the United States Constitution by applying Ohio

tort law to alleged events that had their factual and legal nexus in the Commonwealth of Pennsylvania. Therefore, even if the Common Pleas court properly authorized *general jurisdiction* over the civil matter below pursuant to O.R.C. Section 2305.01, the Court nonetheless exceeded its authority on independent statutory and Constitutional grounds.

D. Relators' lack an adequate remedy at law regarding the issue of Respondents' subject matter jurisdiction over the underlying civil action and are therefore entitled to the extraordinary relief in prohibition and mandamus.

1. Challenges to a court's subject matter jurisdiction may never be waived and Realtor's failure to challenge the Common Pleas' Court jurisdiction in Court of Appeals Case Number CA-15-103714 does not foreclose them from making the same challenge in the within Complaint for Prohibition and Mandamus.

Respondents' Motion to Dismiss insist that Relators had an "adequate remedy" at law regarding the issue of the common pleas court's subject matter jurisdiction over the underlying civil action via appeal. Respondents further state Relators' failure address the common pleas court's subject matter jurisdiction with the Court of Appeals forecloses them from doing so in the within proceedings for prohibition and mandamus.¹² This argument fundamentally misunderstands the nature of Relators' argument. In challenging the common pleas court's subject matter jurisdiction, Relators are raising an argument that may **never be waived**.

This court has long recognized that subject matter jurisdiction is the *sine qua non* of a Court's ability to adjudicate parties' underlying rights. *See, e.g., Rosen v. Celebrezze* (2008) 117 Ohio St.3d 241, 2008-Ohio-853, *citing Pratts v. Hurley* (2004) 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992 ("Because subject matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can **never** be waived and may be challenged at **any** time")

¹² See page 7 of Relators' Memorandum in Support of their Motion to Dismiss ("[t]he fact that relators already appealed to the Eighth District Court of Appeals but apparently failed to raise any jurisdictional issue in their appeal . . . does not make that remedy inadequate. The availability of such a remedy should preclude extraordinary relief here.")

(emphasis added.)) Indeed, subject matter jurisdiction is a condition precedent for the Court to even consider a dispute. “Subject matter jurisdiction is a court’s power to hear and decide a case on the merits.” *State ex. rel. Tubbs Jones v. Suster* (1998) 84 Ohio St.3d 70, 76, 1998-Ohio-275, *citing Morrison v. Steiner* (1972) 32 Ohio St.2d 86, 290 N.E.2d 735, 737. If a court acts without subject matter jurisdiction, “then any proclamation by that court is **void.**” *Id.* at 76, *citing Patton v. Diemer* (1988) 35 Ohio St.3d 68, 518 N.E.2d 941 (emphasis added).

Therefore, Respondents’ argument that Relators’ prior appeal to the Court of Appeals of Ohio for the Eighth Appellate District¹³ was their one and only “adequate remedy” to challenge the common pleas court’s jurisdiction over the underlying civil action must be dismissed. As a challenge to a court’s subject matter jurisdiction may never be waived, **even on appeal**, Relators may maintain such a challenge in the prohibition and mandamus proceedings presently pending before this honorable Court.

2. The existence of an adequate remedy at law is irrelevant in the within matter because Relators have demonstrated that Respondents patently and unambiguously lack subject matter jurisdiction over the underlying civil action.

This Court has recognized that the availability of an adequate remedy at law is material to actions for prohibition and mandamus **only if** the inferior court does not already patently and unambiguously lack jurisdiction over the dispute in issue. Respondents’ own case law confirms this bedrock principle. *See, e.g., Dzina v. Celebreeze*, 108 Ohio St. 3d 385, 2006-Ohio-1195, 843 N.E.2d 1202 at ¶12 (“[i]n 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 challenging that jurisdiction has an adequate remedy by appeal.”) As Relators have amply demonstrated for purposes of the within Motion to Dismiss, *supra*, that they have an adequate

¹³ Relators also named that Court as a Respondent in the within Writ for prohibition and mandamus.

factual basis to establish the common pleas court's **patent and unambiguous** lack of subject matter jurisdiction. Therefore, this Court should reject Respondents' argument that Realtors have an adequate remedy at law exclusively on this basis.

3. Appeal is inadequate remedy at law for Respondents because under the unique circumstances of this case, it does not afford Relators complete, beneficial, and speedy relief. Extraordinary relief under Prohibition and Mandamus is therefore appropriate.

Respondents' argument that an appeal represents an adequate remedy at law overlooks this Court's longstanding insistence that "in order for an alternative remedy to constitute an adequate remedy at law, it must be complete, beneficial, and speedy." *State ex rel. Shemo v. Mayfield Hts.*, 93 Ohio St.3d 1, 5, 752 N.E.2d 854 (2001). Moreover, the alternative remedy at issue "must be adequate under the circumstances of the case." *State ex rel. Ohio State Racing Commission v. Walton* 37 Ohio St.3d 246, ___, 525 N.E.2d 756 (1988), *citing State ex rel. Butler v. Denis* 66 Ohio St. 3d 123, 420 N.E.2d 116 (1981). This Court generally inquires into the factual background of individual cases to determine whether an appeal would be "complete, beneficial, and speedy" as well as "adequate under the circumstances of the case." In *State ex rel. Shemo, supra*, for instance, the Court observed that relief by extraordinary writ was appropriate when an appeal—and the extensive litigation the process entails—would prove too cumbersome: "given the lengthy litigation this dispute has already engendered, relegating relators to a motion in the trial court and yet another appellate process would **not** be **sufficiently speedy.**" *Id.* at 5.

In the within matter, relators have been embroiled in civil litigation lacking an adequate jurisdictional basis since November 2011. Trial in the matter below was scheduled, cancelled, and rescheduled at least five times before a three-day mistrial ensued in April 2015. Less than one month later, Relators were subjected to a five-week jury trial consisting of over three

thousand (3,000) trial transcript pages demonizing them for conduct wholly outside the jurisdiction of Ohio courts. The resulting jury verdict—given under the influence of lurid testimony relating to a purported incident of child sexual abuse that went **unpunished** in the jurisdiction in which it occurred—essentially bankrupted Relators and existentially threatened the operation of their businesses. Furthermore—as even Respondents concede—the within matter was on appeal for over eighteen months, at which point the Court of Appeals exceeded its own subject matter jurisdiction by upholding a verdict beyond the jurisdiction of the state of Ohio. Finally, Relator Roth has posted a \$329,158.00 **cash bond** with Respondent Clerk of Courts, Cuyahoga County, as security for the outstanding judgment. Absent extraordinary relief in prohibition and/or mandamus, Relator Roth faces the loss of a substantial portion of her life savings, making any further proceedings—much less an appeal on grounds of subject matter jurisdiction—impossible to pursue.

CONCLUSION

For the foregoing reasons, Relators respectfully request that this honorable Court deny Respondents' Motion to Dismiss the within action and take all other appropriate action consistent with the proceedings in prohibition and mandamus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11(B)(1)(a) and 3.11(C)(1) a true and accurate copy of the foregoing *Relators' Memorandum in Opposition to Respondents' Motion to Dismiss* was served this 24th day of January, 2019 via email to the following parties:

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