In the Supreme Court of Ohio

The State of Ohio, *ex rel.*

YOUNGSTOWN CIVIL SERVICE COMMISSION, *et al.*

Relators

v.

JUDGE MAUREEN A. SWEENEY, *et al.*

Respondents

Case No. 2022-0802

ORIGINAL ACTION

BRIEF OF *AMICUS CURIÆ* IN SUPPORT OF RESPONDENT

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In accordance with Rules 12.07(A) and 16.06(B) of the Rules of Practice of the Supreme Court of Ohio, Michael R. Cox ("Cox"), through his undersigned counsel of record and in his capacity as *amicus curiæ*, hereby offers this brief in support of Respondent Judge Maureen A. Sweeney ("Judge Sweeney").

STATEMENT OF INTEREST OF *AMICUS CURIÆ*

Cox is the party who initiated the administrative appeal that is the subject of the action for which relators seek relief in prohibition in this original action. As such, he has a direct and consequential interest in the outcome of this action inasmuch as granting the relief sought by relators would prohibit Judge Sweeney from exercising jurisdiction over his administrative appeal and prevent enforcement of the May 16, 2022, judgment entry issued in such appeal.

STATEMENT OF FACTS AND DISPUTED INTERPRETATION OF THE RECORD

Cox adopts the Statement of Facts recited in the merit brief filed on behalf of Judge Sweeney on February 7, 2022, but notes that his administrative appeal under Chapter 2506 of the Ohio Revised Code was filed on July 17, 2020, or within 30 days of the date the Youngstown Civil Service Commission ("the Commission") overruled a motion he had made for entry of a final order that complies with Rule XII of the civil service rules of the City of Youngstown ("the City").

The undersigned counsel represented Cox at all relevant stages of both the administrative proceedings conducted by the Commission from and after May 13, 2020, the date he entered his appearance on Cox's behalf and asked the Commission to enter a final and appealable order that complies with Rule XII. The specific relief sought by Cox in his motion for entry of a final and appealable order was recited in his amended and restated motion, filed with the Commission the next day, as follows:

> … The grounds for this motion are that the Commission (1) has yet to enter a final and appealable order disposing of Cox's appeal, (2) should act forthwith to vacate all proceedings conducted last year on Cox's May 20, 2019, appeal on the grounds that the Commission relied, to Cox's prejudice and detriment, on false representations by the Administrator respecting the alleged review and recommendation of the author of the promotional examination in response to Cox's challenge to the author's failure to confine questions posed in such examination to test only the printed materials identified by the City in establishing the conditions under which the examination would be administered, and (3) should now act to address Cox's protest to Question No. 129 on the merits instead of continuing to regard such protest as moot by virtue of its decision made during a July 25, 2018, meeting to grant all candidates credit for a correct answer to such question when evidence recently uncovered by Cox demonstrates that such decision was the by-product of material misrepresentations made by the Administrator of the Commission during that July 25, 2018, meeting.

Joint Stipulation of Facts, ¶ 19 and Joint Ex. E, at 1-2. Plainly, the object of Cox's motion was to urge the Commission to discharge a duty clearly and unambiguously imposed on its members by the terms of the sixth paragraph of Section 3 of Rule XII of the City's civil service rules[1] to cause Cox to be "be notified in writing of the Commission's decision" on his May 19, 2019, civil service appeal from that appointing authority's decision to use a promotion eligibility list certified by the Commission in promoting someone other than Cox to the rank of Lieutenant in the City's Police Department on May 14, 2019.

Relators falsely claim or imply that Cox's motion made on May 13, 2020, was presented solely to seek "reconsideration" of a decision of made by the Commission on July 25, 2018, to resolve protests over questions appearing on the promotional examination and to certify the results of the promotional examination for Lieutenant. The clear import of that motion instead was to ask for compliance with the specific written notice requirements of Rule XII and *alternatively* to ask for "reconsideration" of various aspects of the decision announced by the Commission

[1] This part of Rule XII is reproduced in the record at Page 46 of Joint Exhibit A.

on July 25, 2018, in deciding various protests to examination questions and certifying a promotion eligibility list. The first order of business respecting the Commission's review of Cox's May 13, 2020, motion, therefore, was to ask for entry of a written notice of a final decision on Cox's May 19, 2019, civil service appeal that then would have been served on Cox in accordance with Rule XII of the City's civil service rules. Relators' attempt in their Statement of Facts to mislead this Court or shield it from the true purpose and intent of Cox's May 13, 2020, motion by trivializing its as if merely presented as a request for discretionary "reconsideration" is **not** supported by the record.

The issue ultimately to be decided in Cox's administrative appeal is whether he was required to bring his appeal challenging the action of the appointing authority in promoting someone other than Cox to the rank of Lieutenant before May 19, 2019, to be considered timely under the City's civil service rules. The Commission claims that Cox was late in seeking review because his appeal was not filed until nearly ten months after the date of the Commission's decision to certify the results of the Lieutenant's examination. However, Cox contends that the City's own rules provide that he could **not** initiate any appeal of the decision of the Commission to certify the results of such examination unless and until the Mayor of the City, in his role as appointing authority, would actually use the list, as he eventually did on May 14, 2019, to promote someone to the rank of Lieutenant. The City's civil service rules do **not** subject every decision made upon application or enforcement of such rules subject to an appeal to the Commission. Instead, the second paragraph of Section 3 of Rule XII of the City's civil service rules expressly *limits* appeals to the Commission to disputes over decisions made by an *appointing authority* upon interpretation or application of such rules. *See* Joint Ex. A, Rule XII, § 3, ¶ 2, at 45 (appeals limited to review of "an action of the Appointing Authority"). Thus, Cox argues that he had no opportunity to

contest the *Commission's* decision to certify a promotion eligibility list until the *Mayor* took "action" in reliance on that list and promoted someone other than Cox. After all, until such action was taken by the appointing authority, Cox had not suffered any form of injury at the hands of the Commission.

The Commission, to this day, has yet to confront this core issue. Instead, it merely refused to conduct an evidentiary hearing on Cox's appeal, declared that Cox was too late in challenging the results of the Commission's July 25, 2018, meeting, and then ignored its own counsel's advice by refusing to reduce the decision it made on Cox's May 19, 2019, civil service appeal to writing and then cause notice of that decision to be served on Cox.

Judge Sweeney ultimately will have to decide the question Cox wants a court of record in this state to decide, *viz.*, whether (1) he lodged an untimely appeal with the Commission on May 19, 2019, when he did not seek the Commission's review of its July 25, 2018, decision by lodging an appeal under the civil service rules within ten days of the date of that decision or (2) lodged a timely appeal under the civil service rules by seeking review upon taking such appeal within ten days of the appointing authority's decision to promote someone other than Cox in reliance on the Commission's certified promotion eligibility list.

This is the very issue over which Judge Sweeney plainly has jurisdiction since a resolution of that issue will determine whether the Chapter 2506 appeal lodged by Cox in the Mahoning County Court of Common Pleas on July 17, 2020, itself was timely.

Huffing and puffing about the "timeliness" of the Chapter 2506 appeal before Judge Sweeney will do no good unless and until *all* of the underlying "timeliness" issues are addressed, including the one the Commission continues to ignore.

This original action cannot exist in a vacuum. It arises in the context of a challenge to the authority of a judge to hear issues arising in the context of an appeal from an administrative agency of a chartered municipality exercising Home Rule powers and how Judge Sweeney has elected to discharge her duties in this case in a manner that reasonably minimizes expense, avoids inconvenience in the judicial process, and removes impediments to the administration of justice. Judge Sweeney's order of May 16, 2022, accomplished each of these objectives without exercising power not conferred on her by the Ohio Constitution and the General Assembly. The writ requested by relators therefore should be denied.

LIMITS OF THE SCOPE OF THIS COURT'S DECISIONS IN COX'S PRIOR ORIGINAL ACTION

Relators are quick to claim that this Court's August 18, 2021, and October 26, 2021, decisions in Cox's original action in mandamus and *procedendo* are *res judicata* and therefore bind Judge Sweeney, by the principle of *stare decisis*, to decline to exercise jurisdiction over Cox's Chapter 2506 appeal and prohibit her from issuing any order other than to dismiss such appeal, including the one she issued on May 16, 2022, to require the Commission to serve a written notice of its final decision on Cox's May 19, 2019, civil service appeal on Cox so he can perfect an administrative appeal from such a final order.

This Court decided the *first* of the two questions presented by the facts in this case by holding that the Commission indeed had issued a final and appealable order on July 17, 2019, when it approved the minutes of the meeting in which Cox's May 19, 2019, civil service appeal was decided and therefore the relief sought by Cox in his own original action in mandamus and *procedendo* would not do him any good because the act he wanted the Commission to be compelled to perform – issue a "final and appealable" decision in his civil service appeal – already had been performed by the Commission in approving the minutes of the June meeting denying relief.

However, this Court did **not** decide the *second* of those two questions, namely, whether the Commission failed to discharge its clear legal duty when it ignored its own counsel's advice and declined to serve Cox with "notice in writing" of its final decision needed by Cox as a prerequisite to perfecting a Chapter 2506 appeal from such decision. A decision on this question depends on application of the principles of Home Rule in Ohio since the written notice requirement of Rule XII of the City's civil service rules does **not** contradict any general law and therefore such requirement *also* must be satisfied before Cox's time for seeking review under Chapter 2506 can begin to run based on decisions announced by this Court in the context of similar rules and duties imposed by chartered municipalities that require more notice than the "bare-bones" minimum notice of publishing an agency's final decision in its minutes.

Fortunately, given the precise nature of an action seeking relief in prohibition, this Court need **not** make – and, indeed, *should* **not** make – that decision. After all, the General Assembly has reserved adjudication of that sort of dispute for a judge of a court of common pleas to make … in this case, in the context of deciding whether Cox's civil service appeal to the Commission was timely. In other words, it will fall to Judge Sweeney to sort out the very issue the Commission has dodged and to determine, whether Cox had to commence his appeal within ten days of July 25, 2018, when the Commission certified the promotion eligibility list, or within ten days of May 14, 2019, when the Mayor finally used that list to promote someone other than Cox. What Judge Sweeney did on May 18, 2022, in the interim, is to order the Commission to eliminate extensive briefing that otherwise would have necessary to address the question of whether a final decision in compliance with Rule XII has been issued. She did so in the context of deciding that a "notice in writing" had to be served on Cox in order for the Commission to be in compliance with its rules and that the Commission must do what she ordered so as to allow Cox to meet the

statutory prerequisites of perfecting an appeal under Chapter 2506 unless the Commission would elect, on remand, to conduct an evidentiary hearing and make a further record in support of its final decision. And Judge Sweeney's order plainly preserves for later appellate review the question of whether the appeal taken on July 17, 2020, itself was timely. In other words, Judge Sweeney has made sure that relators will be able to review her decision on how Rule XII is to be interpreted and applied in the ordinary course of appellate review once she enters a final and appealable judgment in Cox's administrative appeal … thereby preserving for relators that availability of a remedy at law to redress any error that relators contend Judge Sweeney has made in fashioning her May 16, 2022, judgment entry.

LAW AND ARGUMENT

I. JUDGE SWEENEY HAS NOT PATENTLY AND UNAMBIGUOUSLY EXERCISED JURISDICTION NOT EXPRESSLY CONFERRED ON HER OVER THE SUBJECT MATTER OF COX'S ADMINISTRATIVE APPEAL.

In the final analysis, what this Court has before it is a dispute over whether a judge to whom an administrative appeal has been presented under Chapter 2506 of the Ohio Revised Code has exceeded the limits of her judicial powers by making a decision regarding a dispute over whether the appellant in that case must be served with written notice of the local agency's final decision in compliance with such agency's own rules even though the decision was memorialized in the minutes of such agency's meetings. What ultimately hangs in the balance, then, is whether the appellant in such case ever will secure judicial review of the agency's decision that no such written notice is required so that the reviewing court will have the authority under Chapter 2506 to determine whether a timely appeal has been launched under O.R.C. § 2505.07. In Cox's case, if he had to initiate his civil service appeal in 2018, the appeal he initiated on May 19, 2019, would be too late. However, if the local agency's rules did not allow him to commence his appeal until

May of 2019, after the appointing authority took action adversely affecting Cox's interest in promotion, such appeal could not be commenced by operation of O.R.C. 2505.07 until the Commission completed all tasks required of it by its own Rule XII to cause its final order to be prepared "in writing" and then given to Cox.

These are questions left for a *trial judge* to decide in the first instance under Chapter 2506 of the Ohio Revised Code and are **not** supposed to be left for this Court to determine in the first instance in the context of an original action in prohibition seeking to cause this Court to prevent Judge Sweeney from making that decision in Cox's case.

Prohibition is an extraordinary remedy reserved for unusual cases where a trial judge or an appellate court claims the authority to make decisions in a matter where it is plain and unambiguous that no such authority exists. *State ex rel. Smith v. Hall*, 145 Ohio St.3d 473, 474, 50 N.E.3d 524, 526, 2016-Ohio-1052, ¶ 7, *citing Chesapeake Exploration, L.L.C. v. Oil & Gas Commission*, 135 Ohio St. 3d 204, 206, 985 N.E.2d 480, 482, 2013-Ohio-224, ¶ 11. Relief in prohibition accordingly is to be granted only "in limited circumstances and with great caution and restraint." *State ex rel. Prade v. Ninth District Court of Appeals*, 151 Ohio St.3d 252, 254, 87 N.Ed.3d 1239, 1240, 2017-Ohio-7651, ¶ 11, *citing State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265, 268 (2001).

Prohibition is **not** available as a remedy to prevent or correct errors allegedly made by a judge in the exercise of his or her jurisdiction over the subject matter of a case. *State ex rel. Shumaker v. Nichols*, 137 Ohio St.3d 391, 393, 999 N.E.2d 630, 633, 2013-Ohio-4732, ¶ 14, *citing State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 74, 701 N.E.2d 1002, 1006 (1998). Indeed, a court has the authority to determine its own jurisdiction and prohibition will **not** lie to vacate such a determination when a plain and adequate remedy is available to review that decision in a post-

judgment appeal. *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 656, 646 N.E.2d 1110, 1112, 1995-Ohio-145; *see also Worrell v. Athens County Court of Common Pleas*, 69 Ohio St.3d 491, 495-496, 633 N.E.2d 1130, 1134 (1994).

A common pleas court judge has jurisdiction over appeals perfected under Chapter 2506 of the Ohio Revised Code. O.R.C. § 2506.01; *see also State ex rel. Cox v. Youngstown Civil Service Commission*, 165 Ohio St.3d 240, 245, 177 N.E.3d 267, 273, 2022-Ohio-2799, ¶ 25. That is *precisely* the sort of case Cox has commenced in this case and over which Judge Sweeney presided in issuing her judgment entry of May 16, 2022.

It is only when an inferior court lacks any possible claim to authority to act that the availability of an adequate remedy of appeal becomes immaterial to the exercise of supervisory jurisdiction by a superior court to head off the usurpation of judicial power by the inferior court. *State ex rel. Adams v. Gusweiler*, 30 Ohio St.2d 326, 329, 285 N.E.2d 22, 24 (1972).

In the context of the original action now before this Court, this means that no writ of prohibition should be issued absent (1) evidence that Judge Sweeney is exercising judicial power over the subject matter of a controversy over which she plainly and unambiguously lacks jurisdiction, (2) a finding that refusing the writ would result in injury for which there is no adequate remedy, and (3) Judge Sweeney's exercise of such power "amounts to an unauthorized usurpation of judicial power." *State ex rel. Flower v. Rocker*, 52 Ohio St.2d 160, 162, 370 N.E.2d 479, 480 (1977) (writ of prohibition would not lie where court had jurisdiction to rule on an affirmative defense of *res judicata*); *State ex rel. Rouault v. Common Pleas Court*, 50 Ohio St.2d 65, 66, 362 N.E.2d 643, 644 (1977).

In the end, relators assert that Judge Sweeney does not have jurisdiction over Cox's administrative appeal because (1) he did not perfect an appeal within 30 days of the entry of the

Commission's decision on his May 19, 2019, civil service appeal upon the minutes of its proceedings and (2) this Court's August 18, 2021, and October 26, 2021, decisions denying Cox relief in mandamus or *procedendo* is *res judicata* and binds Judge Sweeney to decline to exercise jurisdiction over such appeal.

Regarding the question of the timeliness of Cox's appeal, prohibition actions are no place to decide whether a statute of limitations bars a claim subject to a petition for writ of prohibition. *State ex re. Jones v. Suster*, *supra*, 84 Ohio St.3d at 75-76, 701 N.E.2d at 1007, *citing State ex rel. Levy v. Savord*, 143 Ohio St.451, 454, 55 N.E.2d 735, 736 (1944). This is because a claim that a party has failed to commence an action within an applicable limitation period is **not** a defect in the *jurisdiction* of a court to hear a case. *Tatro v. Langston*, 328 Ark. 548, 552, 944 S.W.2d 118, 120 (Ark.1997) ("'[P]rohibition is not an available remedy if the statute of limitations governing a particular proceeding is not jurisdictional, but may only be raised as an affirmative defense.'"), *cited with approval in State ex rel. Jones v. Suster*, *supra*, 84 Ohio St.3d at 76, 701 N.E.2d at 1007. Rather, the limitation defense is a bar to a *party's* access to the court if it is determined that his or her action was not commenced in a timely fashion. It is **not** a bar to *access* to the court to make that determination on the merits. *State ex rel. Jones v. Suster*, *supra*, 84 Ohio St.3d at 75, 71 N.E.2d at 1007, *citing Executors of Long's Estate v. State of Ohio*, 21 Ohio App. 412, 415, 153, N.E. 225, 226 (1926). Thus, even if Judge Sweeney ultimately were to determine that Cox did not satisfy O.R.C. § 2505.07 by filing his Chapter 2506 appeal in a timely fashion, it remains that she has jurisdiction over that limitations *defense* and can decide that very question in the context of how Rule XII of the City's civil service rules is to be interpreted and applied in Cox's case because Chapter 2506 confers on the very power needed by her to do so.

Even so, the record establishes that this Court decided in Cox's original action *only* that the entry of minutes in the Commission's journal of proceedings constituted issuance of a "final and appealable" order and therefore no relief in mandamus or *procedendo* would be ordered because the Commission already had done what Cox had asked this Court to order it to do. However, this Court *twice* declined to address the *second* part of the two-part test for rendering a final decision on a civil servant's appeal under Rule XII of the City's civil service rules. Not only did the Commission have to render that decision "in writing," but it *also* had to give "notice" of that decision "in writing" to Cox.

Judge Sweeney has interpreted Rule XII to mean that until such a written notice is given to all parties to a civil service appeal, including Cox, she cannot hear Cox's administrative appeal since the Commission's own rule establishes "notice in writing" as a prerequisite to final disposition of any appeal before it.

Cox may be right and he may be wrong, but he is entitled to adjudication of this issue in some court of record of this state. Section 16 of Article I of the Ohio Constitution says as much.

Prohibition cannot lie to deprive Cox of due process in the determination of whether his appeal presented to the Commission on May 19, 2019, was timely. The Commission persists in its refusal to make that determination and this Court did not make that decision in the context of how Rule XII is to be interpreted and applied when it denied Cox's petition for relief in mandamus and *procedendo*. At least Judge Sweeney acknowledges that Section 16 of Article I of the Ohio Constitution guarantees Cox to access to some court in Ohio for determination of that question and she has exercise jurisdiction plainly and unambiguously conferred on her by operation of O.R.C. § 2506.01 in issuing her May 16, 2022, order.

Will Judge Sweeney be sustained on this issue if relators ultimately appeal a final judgment entered on a Chapter 2506 appeal perfected by Cox after written notice of the decision on his May 19, 2019, civil service appeal finally is given to him? That remains to be seen, but it is clear that relators have no grounds for asking this Court to prohibit Cox from securing Judge Sweeney's considered view on what Rule XII of the City's civil service rules means and how it is was to be applied by the Commission in Cox's circumstances. Judge Sweeney plainly and unambiguously has the authority to make that decision and this Court should not indulge relators' attempt to prevent Cox from securing judicial review of the Commission's refusal to grant him an evidentiary hearing or to give him a "notice in writing" of its final decision in disposition of his May 19, 2019, civil service appeal so he can clear all the hurdles to perfecting a Chapter 2506 appeal.

II. RELATORS' AVAILABLE PLAIN AND ADEQUATE REMEDY AT LAW BARS RELIEF IN PROHIBITION IN THIS CASE.

Consistent with principles applicable to any form of equitable relief sought in court, relators are not entitled to a writ of prohibition in this case because they have available to a regular appellate process affording them a plain adequate remedy at law.

Judge Sweeney's May 16, 2022, order does **not** foreclose eventual appellate review of her interpretation and application of the "notice in writing" requirement of Rule XII. The question can be raised by relators both in a cross-assignment of error in an administrative appeal commenced by Cox after written notice of the decision rendered in his May 19, 2019, civil service appeal is served on him and in an appeal that any party may take from the final judgment ultimately entered by Judge Sweeney in disposition of Cox's administrative appeal on the merits.

In this case, Judge Sweeney exercised authority consistent with her core jurisdiction over the administrative appeal before her. Relators can have recourse to review by the Seventh Appellate Judicial District of the Ohio Court of Appeals if they dispute any aspect of Judge Sweeney's final judgment in disposition of Cox's Chapter 2506 appeal, including the question of whether this Court's decisions in Cox's own original action had *res judicata* or collateral estoppel effect and whether the trial judge's interpretation and application of Rule XII was correct. Those remedies are plain and adequate and therefore head off any claim to relief in prohibition based on the record of this original action.

Judge Sweeney's May 16, 2022, judgment Cox's civil service appeal remanded Cox's civil service appeal to the Commission to require its members to satisfy the requirement to "notif[y]" Cox "in writing" of their final decision in disposition of his May 19, 2019, civil service appeal. Relators' protests notwithstanding, Judge Sweeney did **not** undertake to wield (or threaten to wield) any claim to judicial power in respect of any other aspect of Cox's administrative appeal so far. She has restricted herself to ordering the Commission to complete the process outlined in Rule XII of the City's civil service rules so this Court's rule that all *local* regulations must be satisfied before a municipal agency's order can be regarded as "final and appealable." For reasons detailed in her merit brief and by reference to the authorities cited above, Judge Sweeney's authority in Cox's appeal includes deciding issues bearing on her jurisdiction over that appeal.

Judge Sweeney clearly has jurisdiction within the scope of Sections 2506..01 of the Ohio Revised Code to address the Rule XII issue having a bearing on her jurisdiction to hear the merits of Cox's administrative appeal. She acted at the earliest opportunity to enter an order that would aid in the determination of her jurisdiction and to satisfy her duty under Civil Rule 1(B) to manage her docket in an efficient manner that would minimize litigation expenses, avoid

inconvenience in the judicial process, and eliminate as must as reasonably possible all impediments to an expedient administration of justice. Such action on Judge Sweeney's part was entirely consistent with the authority she wields and duty she has as the judicial officer to whom Cox's administrative appeal had been assigned. The result in this case, therefore, is dictated by applying the following principle:

> Neither prohibition nor mandamus will lie where relator possesses an adequate remedy in the ordinary course of law. *State ex rel. Hunter v. Certain Judges of the Akron Mun. Court* (1994), 71 Ohio St.3d 45, 46, 641 N.E.2d 722, 723. Absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court's jurisdiction has an adequate remedy by appeal. *State ex rel. Enyart v. O'Neill* (1995), 71 Ohio St.3d 655, 656, 646 N.E.2d 1110, 1112 . . . .

State ex rel. Dannaher v. Crawford, 78 Ohio St.3d 391, 393, 678 N.E.2d 549, 552 (1997). In the end, Judge Sweeney has merely "determine[d] her own jurisdiction" over the subject matter of the administrative appeal before her and her judgment entry of May 16, 2022, thus is subject to the "adequate remedy by appeal" afforded to the relators by the Ohio Rules of Appellate Procedure once a final judgment is entered in disposition of Cox's Chapter 2506 appeal. Relators therefore have a plain and "adequate remedy in the ordinary course of the law" through that appellate process and therefore should **not** be able to entreat this Court to intercede at this point and disrupt an orderly process of judicial review by sparing them the need to pursue the plain and adequate remedies available to them through their appeal as of right to the Seventh Appellate Judicial District and a possible subsequent discretionary appeal to this Court should they be disappointed by the results of that appellate process. *Dannaher* offers all the guidance this Court should require in denying the relief sought by the relators in this original action because they do not lack a plain and adequate remedy at law.

Relators' present claim that an appeal taken under the Ohio Rules of Appellate Procedure does not afford them an adequate remedy at law is spurious. If this Court's disposition of Cox's action in mandamus and *procedendo* is *res judicata* or has collateral estoppel effect, relators will be able to assert such *defenses* in proceedings conducted by Judge Sweeney after the Commission completes its work under Rule XII and then may seek appellate review of Judge Sweeney's final decision on such *defenses*. The conclusion relators urge this Court to draw from its decisions in Cox's original action is **not** supported by the fact that those decisions did **not** address the Rule XII question that Judge Sweeney decided. The remedy of appellate review of Judge Sweeney's interpretation and application of Rule XII will be available in the ordinary course once the Judge Sweeney has the Commission's final decision "in writing" before her and she can exert power, consistent with her jurisdiction over Chapter 2506 appeals, to decide all issues bearing on the question of whether the Commission erred in determining that Cox's civil service appeal was not initiated in a timely fashion when he brought it on May 19, 2019.

The Seventh Appellate Judicial District's dismissal of relators' premature attempt to take an appeal from Judge Sweeney's order of May 16, 2022, does not change anything. That decision was made upon application of Section 2505.02(B)(1) of the Ohio Revised Code and the Ohio Rules of Appellate Procedure in determining merely that such order constituted a "remand" of Cox's civil service appeal to follow certain instructions designed to eliminate any guesswork over whether Rule XII compelled the Commission to do something more than it did for its order in Cox's civil service appeal to be regarded as "final and appealable." The appellate court determined that the May 16, 2022, order therefore could not form the basis of an appeal, as the Commission's work was not done. Thus, the Seventh Appellate Judicial District's decision is other than on the merits, meaning that all issues relators might wish to present on appeal are preserved.

Relators could have sought review in this Court respecting the Seventh Appellate Judicial District's decision to dismiss their premature appeal, but they elected not to do so. Thus, any delay in seeking immediate review of Judge Sweeney's May 16, 2022, order is the by-product of how relators and their counsel have chosen to rely on the prohibition process rather than to allow the ordinary appellate process play out. That strategy does **not** alter the principles of law that strongly support an order declining to issue a writ of prohibition.

The mere fact that the appellate process available to relators may take longer or cost more is **not** relevant when considering whether such process defeats a petition in prohibition. "Where a constitutional process of appeal has been legislatively provided, the sole fact that pursuing such process would encompass more delay and inconvenience than seeking [relief under an extraordinary] writ … is insufficient to prevent the process from constituting a plain and adequate remedy in the ordinary course of the law. *State ex rel. Willis v. Sheboy*, 6 Ohio St.3d 167, 451 N.E.2d 1200 (syllabus, ¶ 1). Any "potential delay" or added "expense" associated with an appeal prosecuted in the ordinary course does not render such relief inadequate. *In re State ex rel. Casey Outdoor Advertising, Inc. v. Ohio Department of Transportation*, 61 Ohio St.3d 429, 432, 575 N.E.2d 181, 184 (1991).

Perhaps the most fanciful of relators' arguments is reserved for the proposition that Judge Sweeney's order of May 16, 2022, has the effect of "start[ing] the administrative appeal process anew." Her order does no such thing. It was entered in the context of an appeal taken from the one and only civil service appeal that Cox lodged with the Commission on May 19, 2019, that is, five days after the appointing authority promoted someone else to the rank of Lieutenant. That order directs the Commission to complete the process of giving Cox notice "in writing" of its final disposition of that one and only civil service appeal. It does **not** re-rack the entire local

administrative appeal process by treating Cox's civil service appeal by indulging in a legal fiction and treating that appeal as if it had been launched in 2022 or 2023. Thus, all of the *defenses* the Commission or the appointing authority might have in respect of Cox's having commenced his appeal in 2019 rather that 2018 are fully preserved. In the end, Judge Sweeney's order merely requires the Commission to remove any lingering impediments to paving the way for judicial review of the Commission's final action on Cox's May 19, 2019, civil service appeal. Once that is done, and assuming the Commission does not choose to conduct an evidentiary hearing on remand, Cox will be able to re-file his Chapter 2506 appeal and the trial court will be able to address the question of whether the City's civil service rules required Cox to commence his appeal any earlier.

The appellate process ahead will afford relators *two* opportunities to convince Judge Sweeney or the Seventh Appellate Judicial District of the rectitude of its interpretation of Rule XII of the City's civil service rules. Cox also is entitled to judicial review of the Commission's interpretation and application of that rule. A writ of prohibition would deny *both* Cox *and* relators due process rights attending such a review. In the end, then, the plain and adequate remedy available to relators through the appellate process precludes any consideration of granting relief in prohibition on the record of this case.

III. JUDGE SWEENEY'S ORDER ISSUED IN THE COURSE OF ADMINISTERING JUSTICE IN COX'S APPEAL WAS NOT AN ACT UNAUTHORIZED BY LAW.

Judge Sweeney's order of May 16, 2022, demonstrates due respect for this Court's decision to deny Cox relief in his mandamus and *procedendo* action. She did **not** substitute her judgment for the judgment of this Court that an entry in the Commission's minute book confirming the decision taken on Cox's civil service appeal in 2019 constituted entry of a "final" order. This was the sum-and-substance of the "binding precedent" announced by this Court in Cox's original

action. However, Judge Sweeney noted in her order that Cox is entitled to a determination of how Rule XII of the City's civil service rules should have been interpreted and applied by the Commission. This Court never ruled on the question of whether the *local* regulation adopted by the City in exercise of its Home Rule powers required the Commission to do more and give actual notice of such final order to Cox "in writing." Judge Sweeney made that decision in the context of the Chapter 2506 appeal before her.

Accordingly, Judge Sweeney did **not** "contradict" the ruling of this Court when she issued her May 16, 2022, order. She *followed* that decision and noted merely that Cox is entitled to judicial review of the issue this Court declined to address, *viz.*, whether the Commission's order on Cox's May 19, 2019, civil service appeal can be regarded as "final and appealable" unless the Commission *also* complies with the requirement of Rule XII of the City's civil service rules by giving Cox actual notice "in writing" of the order it memorialized in its minute book. Accordingly, nothing in Judge Sweeney's order is at odds with the decision of this Court that a writ would not be issued in Cox's original action because the relief he sought – issuance of a final order – had been completed merely by memorializing such order in the Commission's minute book. Rule XII required *more* of the Commission – or at least Judge Sweeney believes this to be the case – and that conclusion does **not** have the effect of "contradicting" the judgment of this Court.

Once the Commission complies with Judge Sweeney's May 16, 2022, order and completes its work by serving a notice "in writing" of its final disposition of Cox's 2019 civil service appeal and Cox then elects to perfect an administrative appeal from such final order, relators will have the opportunity in the context of that appeal to call to Judge Sweeney's attention the position the Commission has taken regarding the alleged untimeliness of Cox's 2019 civil service appeal. That issue has **not** yet been subject to judicial review on account of the Commission's

persistent failure to "notif[y]" Cox of its final decision "in writing" as expressly required by Rule XII of the City's civil service rules and Cox is entitled by operation of Section 16 of Article I of the Ohio Constitution to such a review. The Commission's failure to comply with that local rule has precluded (and continues to foreclose) judicial review, until now, as a common pleas court cannot review the merits of an administrative appeal unless and until "there is a final order from which to appeal." *Bench Billboard Company v City of Dayton*, Case No. 13015, 1992 WL 80772 (2nd App.Jud.Dist., April 10, 1992) (unreported). Issuance of an order that meets all statutory, regulatory, or other requirements of a "final and appealable order" by a municipal agency is a mandatory jurisdictional predicate for an administrative appeal that "cannot be waived." *Galloway v. Firelands Local School District Board of Education*, Case No. 12-CA-01-0208, 2013-Ohio-4264, ¶ 6 (9th App.Jud.Dist.); *Leist v. Mad River Township Board of Trustees*, 2016-Ohio-2960, ¶ 6 (2nd App.Jud.Dist.) (common pleas court had no jurisdiction over administrative appeal until the township trustees journalized and served a final and appealable order) (both cases cited with approval by this Court at Paragraph 25 of its opinion in disposition of Cox's original action).

This principle is front-and-center in the 1991 decision of the Second Appellate Judicial District in *Centerville Board of Tax Appeals v. Wright*, 72 Ohio App.3d 313, 594 N.E.2d 670 (1991), that still stands as good law even in the aftermath of this Court's decisions in Cox's original action. In *Wright*, an ordinance of the City of Centerville, a chartered municipality defined the process by which final decisions of its Board of Tax Appeals are reduced to writing *and served* on the taxpayer-appellant. The city enacted such ordinance in the exercise of its Home Rule powers. The issue in *Wright* arose in the context of the city's motion to dismiss the taxpayers' administrative appeal for their alleged failure to perfect that appeal within the 30-day time limit of O.R.C. § 2505.07. The city reasoned that the 30-day limit began to run from the date of "entry" of the tax

board's final decision in the appeal. However, in fixing the date on which the taxpayer's 30-day period for perfecting an appeal would begin to run, the Second Appellate Judicial District focused instead on the date of *service* of that final decision precisely because the city's ordinance, just like Rule XII at issue in Cox's case, expressly mandated not only that the decision be reduced to some written form, but **also** that "*[t]he appellant's copy of said decision shall be served upon him [in] the same manner as herein provided for the serving of assessments." Id.,* 72 Ohio App.3d at 316, 594 N.E.2d at 672 (emphasis in original). While it ultimately found that the taxpayers' appeal was untimely, the *Wright* court based its ruling on the fact that such appeal was not perfected within 30 days of the date of *service* and **not** within 30 days of the date of "entry" of the board's final decision on his journal of proceedings.

The decision in *Wright* hinged on a *local* regulation adopted through the exercise of Home Rule powers that specifically imposed on the municipality an affirmative duty to *serve* its final decision in a tax appeal on the taxpayer and **not** merely to "enter" that decision on its journal of proceedings or to approve minutes for a meeting at which its final decision was announced. *That reasoning applies with equal force in Cox's administrative appeal.* Although this Court now has ruled that the Commission issued a final order under *state* law merely by adding a reference to that order in its minutes, Rule XII of the City's civil service rules nevertheless requires more of the Commission to do more, including seeing to it affirmatively that Cox is "notified in writing" of its final decision. Whether this *local* requirement was satisfied was a question properly before Judge Sweeney and she merely decided that question through her order remanding Cox's civil service appeal to the Commission as a means of eliminating all present and future doubt about the administrative appeal jurisdiction issue that had **not** been addressed or decided by any other court, including this Court in disposing of Cox's original action.

This Court reaffirmed the principle on which the *Wright* court relied in the context of an administrative appeal as recently as 2021 in its decision in *State ex rel. Thomas v. Nestor*, 164 Ohio St.3d 144, 146, 172 N.E.3d 136, 138, 2021-Ohio-672, ¶ 8, when it held in the context of a civil action that the time for perfecting an appeal in respect of a final judgment does not begin to run until each service requirement imposed by a court rule is satisfied.

Judge Sweeney decided, correctly in Cox's view, that in the context of how O.R.C. § 2505.07 specifically applies to an administrative appeal, it does not matter, in the end, that *state* law does not incorporate an express service requirement. What does matter in this case is that a *local* regulation – Rule XII – does and that no law of general application in the State of Ohio precluded the City from adopting the specific notice requirement of Rule XII in the exercise of its Home Rule powers.

Thomas and *Wright* required Judge Sweeney to find at this point in these proceedings that Cox's deadline for perfecting his administrative appeal from the Commission's "final" decision in his 2019 civil service appeal *still* has not begun to run because written notice of the Commission's final order has yet to be served on Cox. Thus, in a manner wholly consistent with her power under the Ohio Constitution and Chapter 2506 of the Ohio Revised Code, one of the issues that Judge Sweeney had to decide was whether she could address any of the assignments of error that Cox might wish to raise without first either requiring the parties to brief the question of jurisdiction or remanding this matter to the Commission to require it to issue a *written* decision and *serve* Cox with a copy of that decision in the manner prescribed by its Rule XII so that all doubt regarding Judge Sweeney's jurisdiction could be eliminated should Cox ultimately perfect a new post-remand administrative appeal from the Commission's written final order. That threshold question was decided by Judge Sweeney in the context of determining her court's jurisdiction

over Cox's administrative appeal. She had inherent power as a judge to control her docket and make this determination according to her interpretation of Rule XII, principles of Ohio law, and the public's interest in judicial economy. While that decision was not to relators' liking, their recourse ultimately will be to pursue an orderly appellate process and **not** to abuse the prohibition remedy as a way to short-circuit that appellate process by enlisting this Court to vacate Judge Sweeney's remand order without appellate review.

Section 16 of Article I of the Ohio Constitution guarantees that Cox, at some point, will get a court of record in this state to decide what Rule XII means, how it is meant to apply in the context of Ohio law and this Court's decisions in his original action, and whether the City's *local* regulation promulgated in the exercise of Home Rule powers and requiring service of a final order deserves that same sort of respect and deference as the Commission's July 17, 2019, entry in its minutes constituted "final" agency action received when this Court accepted the memorialization of the Commission's decisions as an act constituting entry of a "final" order.

Extraordinary relief to address relators' disappointment with Judge Sweeney's remand order and interpretation of Rule XII is **not** the appropriate remedy. Appellate review in the ordinary course is.

The City is a chartered municipality organized in accordance with the Home Rule Amendment of the Ohio Constitution. Ohio Constitution, Art. XVIII, §§ 3 and 7. The second paragraph of Section 1 of the Charter of the City[2] provides:

> [The City] shall have all powers that now are, or hereafter may be granted to municipalities by the Constitution or laws of Ohio; and all such powers,

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[2] This section of the City's charter, reproduced in **Appendix 1** attached to this brief, is accessible online through the City's website at the following address: *https://codelibrary.amlegal.com/codes/youngstown/latest/youngstown_oh/0-0-0-4249#chtr__1*.

> whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the Council. In the absence of such provisions as to any power, such power shall be exercised in the manner now or hereafter prescribed by the general laws of the State, applicable to municipalities.

The Commission is the agency created by the City to carry out the provisions of Section 52 of the City's charter[3] and related provisions of the state law mandating the creation of a deliberative body to adopt and administer regulations and adjudicate disputes in the context of the City's civil service system. The power to regulate proceedings before the Commission is a widely accepted regulatory function of local government that does **not** exercise the City's "police power" and does **not** conflict with the general laws of the State of Ohio. Accordingly, Section 3 of Article XVIII of the Ohio Constitution[4] recognizes the Commission's rules as fully enforceable actions taken by the City in the exercise of its Home Rule powers. The rules adopted by the Commission to regulate appeals taken by civil servants from adverse action by appointing authorities of the City accordingly are fully enforceable irrespective of principles of Ohio law that may apply to similar claims arising strictly in the context of state law.

State law recognizes this power of local civil service commissions to regulate their own proceedings in O.R.C. § 124.40(A), providing that the a municipality's civil service commission and its members "shall exercise all other powers and perform all other duties with respect to

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[3] This section of the City's charter, also reproduced in **Appendix 1** attached to this brief, is accessible online through the City's website at the following address: *https://codelibrary.amlegal.com/codes/youngstown/latest/youngstown_oh/0-0-0-4466*.

[4] This section of the Home Rule Amendment, reproduced in **Appendix 2** attached hereto, reads, in its entirety, as follows: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

the civil service of the city … as prescribed [by Chapter 124 of the Ohio Revised Code] and conferred upon … the state personnel board of review with respect to the civil service of the state; and all authority granted to… the board with respect to the service under their jurisdiction shall, except as otherwise provided by this chapter, be held to be granted to the commission with respect to the service under its jurisdiction." One of the powers conferred on the State Personnel Board of Review is the power to regulate all proceedings before the board. O.R.C. § 124.03(A)(6). Hence, by extension, that same power is conferred on the Civil Service Commission of the City by operation of Section 52 of the City's charter in tandem with O.R.C. § 124.40(A).

When it comes to how the Commission was to proceed when Cox lodge his civil service appeal, that rule could not be clearer. It provides, in relevant part, as follows:

> *Hearings* before the Commission *shall be conducted* in an orderly manner ….
>
> Each party may *call witnesses* to testify ….
>
> The appellant shall present his/her case first ….
>
> Upon *completion* of a *hearing*, the Commission may render its decision immediately … or may take the matter under advisement and render its decision within a reasonable time thereafter. *All parties to a Civil Service Commission hearing shall be notified in writing of the Commission's decision.*
>
> If the appellant shall fail to appear at *the time fixed for the hearing*, the Commission may hear the evidence and render judgment thereon. If the Appointing Authority or the authorized representative fails to appear *at the time fixed for the hearing*, and if no evidence is offered in support of the charges, the Commission may render judgment as by default or may hear evidence offered by the appellant and render judgment thereon.

(Emphasis supplied.) Rule XII is reproduced in the record of this original action, in its entirety, at Pages 45 and 46 of Joint Exhibit A.

This rule accordingly sets forth the due process rights the City has guaranteed to Cox as a civil servant. It plainly provides that Cox is entitled to appear before the Commission in an evidentiary hearing "at the time fixed [by the Commission]," during which the Commission is to receive such relevant evidence as Cox would like to present in support of his civil service appeal and, then, the Commission is to arrive at a decision immediately afterward or at a later date and, then, must reduce its decision to some *written* form and, then, must complete the process of adjudicating Cox's appeal by *serving* a copy of its decision "in writing" on the interested parties (including Cox) in some manner reasonably calculated to give notice of final disposition.

This Court noted in its August 18, 2021, opinion in Cox's original action that "[t]here is no genuine dispute that the [C]omission failed to serve [Cox], for [the City] concedes that 'Cox was not personally served' with a copy of the minutes and [the City] points to no other evidence establishing that Cox was otherwise provided with written notification of the minutes." *State ex rel. Cox v. Youngstown Civil Service Commission*, *supra*, 165 Ohio St.3d at 244-245, 177 N.E.3d at 272, 2021-Ohio-2799, ¶ 23. It follows, then, that a determination that the Commission's decision in Cox's appeal could become "final" within the meaning of O.R.C. §§ 2505.07 and 2506.01 and Rule XII of the City's civil service rules *only* when the Commission *both* (1) included a reference to that decision in its minutes *and* (2) caused notice of such decision to be given to Cox "in writing." The relevant inquiry therefore must include an analysis of the rule adopted in exercise of the City's Home Rule powers that expressly provided that Cox *also* was entitled to *service* of such final and appealable order reduced to written form.

Because the service requirement of Rule XII is the by-product of the City's exercise of its Home Rule powers, Judge Sweeney had to consider whether that rule must yield to state law because it conflicts with a general law of the State of Ohio. Her order of May 16, 2022, amount

to a decision that the City's adoption of that rule is **not** inconsistent with any limits on its Home Rule powers guaranteed by Section 3 of Article XVIII of the Ohio Constitution and she therefore was duty-bound to honor and apply the text of Rule XII in deciding whether to accept jurisdiction over Cox's Chapter 2506 appeal or to remand his civil service appeal to the Commission for further action to be taken in compliance with Rule XII.

This Court has adopted a three-part test for determining whether a municipality has exceeded its powers under the Home Rule Amendment. "A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, *and* (3) the statute is a general law." *City of Canton v. State of Ohio*, 95 Ohio St.3d 149, 151, 766 N.E.2d 963, 966, 2002-Ohio-2005, ¶ 9 (emphasis supplied), *citing Ohio Association of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St.3d 242, 244-45, 602 N.E.2d 1147, 1149-50, *and Auxter v. City of Toledo*, 173 Ohio St. 444, 448, 183 N.E.2d 920, 923 (1962). In 2008, this Court reordered the analysis, but the fundamental precepts remain the same: "[T]he … test should be reordered to question whether (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, *and* (3) the ordinance is in conflict with the statute." *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 37, 881 N.E.2d 255, 260, 2008-Ohio-270, ¶ 17 (emphasis supplied).

Under these standards, Rule XII clearly is a valid and enforceable exercise of the City's power of local self-government recognized by the Home Rule Amendment.

First, Rule XII is the by-product of an exercise of a power of local *self-governmen*t and **not** of the police power of the City. The rule applies to **all** classified employees of the City in respect of regulating the process for bringing and adjudicating civil service appeals. It does **not** apply beyond the boundaries of the City, does **not** apply just to police officers, and has **nothing** to

do with keeping the peace, regulating health, or any of the myriad of other functions that fall within the scope of "police power."

Second, Section 2505.07 of the Ohio Revised Code (defining final and appealable orders for purposes of invoking appellate jurisdiction) is **not** a law "enacted by the General Assembly 'to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state,'" *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 82-83, 167 N.E. 158, 159 (1929), and therefore does **not** qualify as a "general law" for purposes of interpretation and enforcement of the Home Rule Amendment. After all, to qualify as a general law, a statute must "(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *City of Canton v State of Ohio*, *supra* (syllabus); *see also Mendenhall v. City of Akron*, *supra*, ¶ 20. Section 2505.07 of the Ohio Revised Code clearly does **not** establish police, sanitary, or similar regulations and therefore is **not** a "general law" subject to analysis under this Court's test for what constitutes a "general law" for purposes of the Home Rule Amendment.

Lastly, state law, under O.R.C. § 2505.02(B), does **not** define "final order" in a way that precludes any chartered municipality from defining how final agency action becomes a "final and appealable" order or imposing *additional* requirements for municipal officials to meet before such an order becomes "final and appealable" even though any such requirement (such as the duty to *serve* an interested party) might not appear in state law.

"In determining whether a local ordinance conflicts with the general law of the state, the court must consider whether the ordinance prohibits that which the [state law] permits,

or vice versa." *Ohioans for Concealed Carry, Inc. v. City of Cleveland*, 90 N.E.3d 80, 85, 2017-Ohio-1560, ¶ 10, *citing Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 105, 896 N.E.2d 967, 976, 2008-Ohio-4605, ¶ 53. Clearly, Rule XII does **not** prohibit anything that state law permits or *vice versa*. Hence, Rule XII does **not** "conflict" with any state statute and Cox is entitled to this Court's application of the express requirements of that rule in deciding this case.

While this Court reasoned in its denial of the relief Cox sought in his original action in mandamus and *procedendo* that he is not entitled to the relief he sought because it would do him no good, as the Commission already had issued a "final" decision by incorporating that decision in its minutes, *by operation of Rule XII of the Commission's own rules*, **no** such decision could cause the 30-day appeal time to begin to run *unless and until* **all** of the specifically prescribed requirements for rendering a "final and appealable" order were met. In Cox's case, that meant, at a minimum, (1) reducing the Commission's decision to throw out his civil service appeal to some *written form* and (2) *serving* actual notice "in writing" of that decision on him. Since it failed to meet *both* of these Rule XII prerequisites in Cox's case, the Commission never did dispose of Cox's civil service appeal in a manner that could be recognized under Chapter 2506 of the Ohio Revised Code as a final and appealable decision. Until Cox receives some written form of the Commission's decision in disposition of his civil service appeal, the time for seeking judicial review of that decision under Chapter 2506 simply has **not** begun to run by operation of a principle reaffirmed by this Court as recently as March 11, 2021, in its decision in *State ex rel. Thomas v. Nestor*, *supra*, 164 Ohio St.3d at 146, 172 N.E.3d at 138, 2021-Ohio-672, ¶ 8 (time for perfecting appeal does not begin to run until service requirement imposed by a rule is satisfied). That is all Judge Sweeney's order of May 16, 2022, embraces.

In the final analysis, Judge Sweeney exercised jurisdiction conferred on her to make a decision in the context of the City's exercise of Home Rule powers after this Court declined to take on that issue. The Commission approved minutes of a meeting in which it announced a decision *without* making sure a written decision was prepared and then *served* Cox with some written form of that decision. Hence, while its August 18, 2021, and October 26, 2021, decisions now establish under *state* law that the mere approval of minutes referring to its decision constitutes entry of a "final" decision has been reached by a municipal agency, this Court left it for Judge Sweeney to decide in the context of Cox's administrative appeal what the legal effect of the failure of the Commission to follow its own Rule XII would mean in terms of whether the Commission's action should be regarded as a final order allowing Cox to invoke the jurisdiction of her court under Chapter 2506. She has done that and did not exceed the limits of her authority in doing so.

This Court held *Thomas* that "[t]he lack of service by the clerk under Civ.R. 58(B) means simply that [the] time for commencing an appeal has not begun to run." *State ex rel. Thomas v. Nestor*, *supra*, ¶ 8. That is the whole point of the issue addressed by Judge Sweeney in her May 16, 2022, order, as Cox cannot perfect an administrative appeal to invoke judicial review of the Commission's decision under Chapter 2506 until the Commission satisfies its own Rule XII duty by reducing that decision to some *written* form and then *serving* that decision on Cox. Judge Sweeney's ruling is that the Commission's failed to follow its own rule, as this Court has observed in *Thomas* that Cox's time for bringing an administrative appeal under Chapter 2506 cannot be regarded as having begun to run until the Commission issues and serves a compliant order. *Accord Centerville Board of Tax Appeals v. Wright*, *supra* (a local regulation specifically imposing on a city an affirmative duty to *serve* its final decision in a tax appeal on the taxpayer and not merely "enter" that decision on its journal of proceedings or approve minutes for a meeting at which its

final decision was announced required *service* before such order could be regarded as final and appealable). Judge Sweeney plainly and unambiguously had jurisdiction to make that call.

If relators disagree with Judge Sweeney, there will be plenty of time for them to raise that issue during the briefing on the merits of Cox's administrative appeal or upon appellate review of Judge Sweeney's final judgment. Accordingly, relators cannot expect this Court to decide that issue for Judge Sweeney by taking jurisdiction away from her when (1) Chapter 2506 clearly and unmistakably confers jurisdiction on a judge of the Mahoning County Common Pleas Court to hear Cox's administrative appeal and (2) the appellate process thereafter would afford relators a clear pathway to seek complete relief once Judge Sweeney enters a final judgment in Cox's administrative appeal. Determining the question of jurisdiction in the context of the requirements of Rule XII plainly falls within the scope of Judge Sweeney's judicial powers. There is no cause to issue an order prohibiting her from discharging duties clearly delegated to her under the Ohio Constitution and Chapter 2506 of the Ohio Revised Code.

CONCLUSION

Since Rule XII is a valid exercise of the power of self-government specifically authorized by Section 3 of Article XVIII of the Ohio Constitution, and since Section 16 of Article 1 of the Ohio Constitution and statutes enacted by the Ohio General Assembly guarantee to Cox access to the Mahoning County Common Pleas Court to perfect an administrative appeal from a qualifying final order of the Commission once it complies with its own Rule XII *service* obligation, and since relators still have available to them the plain and adequate remedy of appellate review in the ordinary course, it follows that relators' petition for relief in prohibition must fail.

Accordingly, Cox joins Judge Sweeney in urging this Court to deny the relief sought by relators in this original action in prohibition and to tax the costs of this action against relators.

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2023, and in accordance with Rule 3.11(C)(1) of the Rules of Practice of the Supreme Court of Ohio, a copy of the foregoing was served on counsel for respondents [*method(s) of service checked*] □ by ordinary U. S. Mail, first-class postage prepaid, addressed to relators' counsel, Emily A. Anglewicz and Diana M. Feitl, Attorneys at Law, Roetzel & Andress, L.P.A., 222 South Main Street, Akron, Ohio 44308 (**Facsimile Telephone No. 330-376-4577**), and J. Jeffrey Limbian, Esq., Law Director, and Adam V. Buente, Esq., Assistant Law Director, City of Youngstown, 26 South Phelps Street, Youngstown, Ohio 44508 (**Facsimile Telephone No. 330-742-8867**), and to counsel for Respondent Judge Maureen A. Sweeney, Gina De Genova, Prosecuting Attorney, and Linette M. Stratford, Assistant Prosecuting Attorney, Mahoning County Prosecutor's Office, 21 West Boardman Street, Fifth Floor, Youngstown, Ohio 44503, □ by facsimile transmission to the facsimile telephone number(s) referenced above, □ by delivery in hand to the offices of counsel at the addresses referenced above, ■ by electronic transmission(s) addressed to *eanglewicz@ralaw.com*, *dfeitl@ralaw.com, raymond.hartsough@mahoningcountyoh.gov*, *jlimbian@youngstownohio.gov*, and *abuente@-youngstownohio.gov*.

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