

In the
Supreme Court of Ohio

STATE OF OHIO *EX REL.*
JUDGE DAVID L. ENGLER

CASE NO. 2026-0466

Plaintiff/Relator,

v.

FRANK LAROSE, et al.,

Defendants/Respondents.

**BRIEF OF *AMICUS CURIAE* THE AMERICAN CIVIL LIBERTIES UNION IN
SUPPORT OF DEFENDANTS-RESPONDENTS FRANK LAROSE, DAVE YOST, AND
THE OHIO BALLOT BOARD**

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INTEREST OF *AMICUS CURIAE*

Amicus the American Civil Liberties Union of Ohio Foundation (“ACLU Ohio”) is the Ohio affiliate of the American Civil Liberties Union, one of the oldest and largest organizations in the nation dedicated to protecting the civil rights and liberties guaranteed in the United States Constitution and the laws of the United States. With over 1.7 million members across the country and with nearly 27,000 members and donors in Ohio, the ACLU appears routinely in state and federal courts as amicus and as direct counsel to defend civil rights and liberties as established in the federal and state constitutions and laws and advocate for the reproductive rights of all people. *See, e.g., State v. Talty*, 2004-Ohio-4888 (as amicus), *Cordray v. Planned Parenthood Cincinnati Region*, 2009-Ohio-2972, *Preterm-Cleveland, Inc., v. Kasich*, 2018-Ohio-441, *State v. Anderson*, 2020-Ohio-6910 (as amicus), *State v. Chapman*, 2020-Ohio-6730 (as amicus), *State ex rel. DeBlase v. Ohio Ballot Bd.*, 2023-Ohio-1823, *Preterm-Cleveland v. Yost*, 2023-Ohio-4570.

INTRODUCTION

In 1998, the Ohio Legislature passed H.B. 421, which, among other things, required that minors seeking an abortion first secure either the consent of a parent or a court order (known as a “judicial bypass”).¹ 1998 Am.H.B. No. 421. The bill was challenged in federal court, and in 2006 the U.S. Court of Appeals for the Sixth Circuit upheld the constitutionality of this law.

Cincinnati Women’s Services, Inc. v. Taft, 468 F.3d 361, 374 (6th Cir. 2006).² Since then, Ohio

¹ Previously, Ohio law required parental consent, judicial bypass, *or* parental notification for minors seeking abortion. 1985 H.B. No. 319 (amended by H.B. No. 421).

² The court held that the law’s prohibition on any minor filing more than one bypass petition per pregnancy was unconstitutional, but it also found that provision to be severable from the remainder of the parental consent statute. *Cincinnati Women’s Servs.*, 468 F.3d at 371 (“The invalidity of the Single–Petition Rule does not affect the remainder of Ohio’s parental consent law and, therefore, is severable”).

abortion providers have been required to document compliance with the parental consent requirement prior to every abortion performed on a minor patient.

In 2023, Ohio voters passed the Reproductive Freedom Amendment to the Ohio Constitution (the “Amendment”), which guaranteed the right for every individual to make and carry out a nonexhaustive list of reproductive choices, including abortion. Ohio Const., art. I, § 22. To date, amicus is unaware of anyone challenging the enforceability of the parental consent requirement or the judicial bypass process under the Amendment.

In his mandamus petition, Relator is asking to rewrite the language of the Ohio Constitution because it happens to be that his court has seen fewer judicial bypass cases of late, which he argues is an unconstitutional intrusion on his jurisdiction. His position is meritless on multiple levels—and indeed, to grant the relief that he seeks would be a breathtaking usurpation of the people’s power in enacting the Amendment. This Court need not reach any question of what the Amendment means in practice. It certainly need not and should not reach the question of how the Amendment interacts with parental consent laws. Relator’s claim fails on its face long before reaching such questions.

First, Relator lacks standing as a matter of both law and fact. As a matter of law, an Ohio juvenile court judge is not injured when fewer cases of a certain category come before that judge’s court. As a matter of fact, Relator cannot even allege facts that plausibly support his claim of injury: He has alleged only that fewer judicial bypass cases have happened to arise in Trumbull County recently. That allegation is manifestly insufficient to support an inference that parental consent laws for abortion are no longer being enforced in Ohio.

Second, even if Relator had standing, his argument is fatally flawed on the merits. Nothing about the Amendment conflicts with the jurisdictional terms of Article IV—none of

which apply to Relator anyway. And even if there were a conflict, the newly enacted Amendment would prevail. The purpose of an amendment is to change the constitution; it is incoherent to suggest that an amendment must be rewritten because it conflicts with the preexisting constitution.

This Court should dismiss this case.

ARGUMENT

I. Relator Lacks Standing Sufficient to Confer Subject Matter Jurisdiction.

Standing is a fundamental requirement in Ohio courts, ensuring that courts “only hear[] objections to the constitutionality of laws from those who are themselves affected.” *State ex rel. Williams v. Indus. Comm.*, 116 Ohio St. 45, 56 (1927), quoting *Jeffrey Mfg. Co. v. Blagg*, 35 S.Ct. 167 (1915) (internal quotation marks omitted). In order to have standing, “a plaintiff must show an actual injury fairly traceable to the defendant's conduct and that it is likely that a court can redress the injury.” *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667, ¶ 12. In a mandamus action, the relator “must show that he ‘would be directly benefitted or injured by a judgment in the case.’ And the injury must be personal—that is, the plaintiff or relator must suffer particular harm that is different from some general harm suffered by the public at large.” *Id.* at ¶ 12 (internal citations omitted). Here, Relator’s claim fails because he cannot show he is injured as a matter of either law or fact.

A. There Is No Standing As a Matter of Law.

Even taking all of Relator’s factual allegations as true, he has failed to demonstrate standing as a matter of law. He has alleged only a purported “structural constitutional conflict affecting the judicial power vested ... under Article IV” of the Ohio Constitution. Relator’s Pet. for Mandamus ¶ 2. Specifically, Relator alleges that, in his role as a juvenile court judge, it is his

judicial duty to hear claims for judicial bypass to the parental consent requirement under Ohio Revised Code 2151.85 and 2919.121(B). Affidavit of Judge David Engler (“Engler Aff.”) ¶ 2. He claims that, although approximately two judicial bypass petitions were filed in Trumbull County per year “[o]ver the five years preceding January 1, 2025,” since assuming office on January 1, 2025, “no judicial-bypass petitions have been filed, docketed, or heard” in his court. Engler Aff. ¶ 4-5. Relator argues this lack of filings “is the direct result of the practical and legal effect of Article I, Section 22, which is being interpreted and applied to eliminate the need for [judicial bypass proceedings].” Engler Aff. ¶ 6. Relator describes the lack of judicial bypass petitions as a loss of his core judicial authority or jurisdiction. Relator’s Mem. Supp. Pet. Mandamus at 5.

That argument fails on its face. Article IV says nothing regarding the specific jurisdiction reserved for juvenile courts, much less the judicial bypass process in particular. Ohio Const., art. IV. Indeed, Relator fails even to cite a specific section of Article IV to support his sweeping claim of a constitutional right to jurisdiction. Section 18 of that Article provides that judges “of the Supreme Court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction [...] as may be directed by law.” Ohio Const., art. IV, § 18. This clear assertion that the jurisdiction of the Ohio courts is subject to change—even by ordinary legislation—undermines Relator’s suggestion that he possesses any constitutionally guaranteed minimum jurisdiction that cannot be changed, even by constitutional amendment. In fact, Ohio courts have previously rejected broad claims of jurisdiction for juvenile courts, finding that “while probate courts——like the courts of common pleas—are provided for in the Ohio Constitution, juvenile courts were established by statute. As a statutory creation, a juvenile court possesses only the jurisdiction that the General Assembly has expressly

conferred upon it.” *State ex rel. Reynolds v. Kirby*, 2023-Ohio-782, ¶ 15, quoting *In re Gibson*, 61 Ohio St.3d 168, 172 (1991) (internal quotation marks omitted).

Relator’s jurisdiction, in other words, is grounded in statute, not the Constitution. Article IV grants him no particular right or interest in hearing any particular type of case. Ohio Const., art. IV, § 18. Nor does he cite to any authority for the proposition that the mere existence of a statute conferring jurisdiction on the juvenile courts gives him a cognizable interest in hearing disputes that are brought pursuant to that statute. To the extent that Ohio constitutional or statutory law provides that a particular category of case need not be brought in his court—or even brought at all—that is no injury to him.

This Court has repeatedly held that standing turns on whether the “plaintiffs have alleged such a personal stake in the outcome of the controversy that they are entitled to have a court hear their case.” *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7. This requirement of personal stake is core to standing because it is how courts “ensure that ‘the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.’” *Clifton v. Blanchester*, 2012-Ohio-780, ¶ 15, quoting *State ex rel. Dallman v. Franklin Cty. Ct. of Common Pleas*, 35 Ohio St.2d 176, 178-179 (1973).

Relator’s sole alleged injury is that the average number of judicial bypass decisions in Trumbull County has dropped since he took the bench on January 1, 2025. Engler Aff. ¶ 4. But Relator provides no reasoning or support for his allegation that fewer cases pending before a court constitutes a concrete and particularized injury to a judge who serves on that court. Indeed, it seems incongruous for a judicial officer to argue that fewer cases being filed is an injury, given the ever-present discussion of how to manage oversized dockets. *See Village of Portage v.*

Pennington, 57 Ohio Misc.2d 1, 4 (M.C. 1989) (discussing methods that Ohio courts use to manage oversized dockets).

Further, Relator also has suffered no cognizable injury that can be causally linked to the Amendment. In general, if a party who is not directly regulated by law claims standing to challenge that law, in order “to establish causation, the plaintiff must show a predictable chain of events leading from the government action to the asserted injury.” *See Food & Drug Adm. v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 385 (2024). Specifically, the Court found that “plaintiffs attempting to show causation generally cannot ‘rely on speculation about the unfettered choices made by independent actors not before the courts.’” *Id.* at 383. As discussed above, Relator argues that he is seeing fewer judicial bypass proceedings than expected due to the Amendment’s deregulatory effect; however, he fails to show what clear chain of causation led to that supposed injury. *See id.* at 390–91 (“The doctors have not offered evidence tending to suggest that FDA’s deregulatory actions have both caused an increase in the number of pregnant women seeking treatment from the plaintiff doctors and caused a resulting diversion of the doctors’ time and resources from other patients.” (emphasis omitted)). As discussed below, there are myriad reasons why a pregnant minor may not file a judicial bypass petition which have nothing to do with the Amendment, including obtaining parental consent for their abortion. In order to show that he has standing, Relator must show a predictable chain of events between the state action he seeks to enjoin and his claimed injury resulting from Respondents’ actions.³ However, Relator’s claims are purely speculative and completely untethered to any specific act or omission by Respondents. Indeed, Relator’s argument relies on the independent choices of

³ Indeed, Relator does not specify any actions by Defendants-Respondents in this case that have led to the drop in judicial bypass cases. Thus, he fails to show that his purported injury is traceable to the Defendants-Respondents’ actions.

minor patients who might bring those cases in the first place, which he himself acknowledges is a rare occurrence. *See Engler Aff.* ¶ 4.

B. There Is No Standing As a Matter of Fact.

As a factual matter, Relator has failed to allege facts sufficient to demonstrate that Respondent Dave Yost, or anyone else, has abandoned the requirement of parental consent for minors seeking abortions. Even if the allegations in Relator’s affidavit are taken as true, they only show that a judicial bypass petition has not been filed in Trumbull County recently. That is hardly a telling occurrence; by Relator’s own account, such petitions have always been few and far between. *See Engler Aff.* ¶ 4.

Relator’s allegation neither shows that judicial bypass proceedings have ceased statewide, nor that the reason for the decrease from two petitions (on average) per year to zero in the past sixteen months is attributable to nonenforcement of the parental consent requirement. Thus, even if a reduction in the number of cases filed in Judge Engler’s court could constitute a cognizable injury under the law—which it cannot—the allegations in the petition, even when combined with the statements in Judge Engler’s affidavit, fail to demonstrate that the Amendment is not actually being enforced. The lack of cases in Trumbull County could very well be the result of an overall decrease in the teen pregnancy rate,⁴ or of more minors obtaining parental consent for abortion care, therefore obviating the need for the court’s intervention. Further, minors in Trumbull County could be filing petitions in any of the contiguous counties,

⁴ For example, researchers found that across Ohio pregnancy rates among 15- to 17-year-olds sank significantly from 59 per 1000 women in 1988 to 11 per 1000 women in 2020. Chiu, D., Maddow-Zimet, I., & Kost, K., *Pregnancies, Births, and Abortions in the United States, 1973–2020: National and State Trends by Age* (2024), <https://www.guttmacher.org/report/pregnancies-births-abortions-united-states-1973-2020> (accessed May 7, 2026) [<https://perma.cc/6K66-K2FE>].

as allowed by R.C. 2919.121(C).⁵ Indeed, any number of explanations could suffice for this insignificant reduction in judicial bypass cases in one court.

In fact, the laws requiring parental consent for abortion care continue to be enforced, and minors seeking abortion care continue to use the judicial bypass to access that care since the passage of the Amendment. This can be easily confirmed by the presence of appellate courts continuing to review judicial bypass denials from lower courts since the passage of the Amendment. *See In re Complaint of Doe*, 2024-Ohio-2140, ¶ 1 (10th Dist.) (reversing juvenile’s court’s dismissal of minor’s judicial bypass request).

II. Relator Has Not Demonstrated Any Constitutional Infirmary with the Amendment.

A. The Amendment and Article IV Do Not Conflict in the Manner Relator Suggests.

This Court need not—and therefore, should not—reach the question of whether the Amendment actually modifies Article IV of the Ohio Constitution through invalidating Ohio’s parental consent requirement, given that this case fails for lack of jurisdiction. *See PDK Laboratories Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (2004) (Roberts, J., concurring) (“[T]he cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more—counsels us to go no further.”). However, if this Court reaches Relator’s constitutional claim, it must reject it. Relator argues that “[w]hen a constitutional provision

⁵ Relatedly, it should be noted that the Trumbull County Juvenile Court website doesn’t even mention the judicial-bypass process which could, in and of itself, be a reason why minors are not filing judicial bypass petitions in that county. Trumbull County Family Court, <https://www.co.trumbull.oh.us/family-court/index.html> (accessed May 8, 2026) [<https://perma.cc/S6S2-64S5>]. Other contiguous counties, such as Geauga County, list both forms and self-assistance resources to guide juveniles through the judicial bypass process. Geauga County Probate/Juvenile Court, *Juvenile Forms*, <https://geaugapjcourt.org/juvenile-forms/> (accessed May 8, 2026) [<https://perma.cc/RW63-GGWK>]. Juveniles in Trumbull County may simply be seeking bypass procedures in other contiguous counties that have made the process easier to access.

operates to remove an entire class of cases from judicial review, it impermissibly interferes with judicial power[.]” Relator’s Mem. Supp. Pet. Mandamus at 5. This assertion is startlingly broad, and entirely unsupported by any authority. Even if the Amendment does invalidate the judicial bypass process created by statute, that is an issue of substantive law, not jurisdiction. Put another way: it is inevitable that changes in the law will result in changes in the types of cases that are subject to litigation, particularly if new constitutional rights render preexisting statutes unenforceable. That basic dynamic does not constitute some sort of infringement on Relator’s authority. In the event the parental consent requirement for abortion were challenged under the Amendment, the question before the court would be whether or not the parental consent statutes infringed on the substantive right to reproductive freedom, not whether the juvenile court had jurisdiction over judicial bypass petitions.

Further, that broad premise from Relator is flatly incorrect under Article IV, Section 18. Again, juvenile court judges have no constitutional guarantee of any particular authority. *See supra* Part I.A.; *State ex rel. Reynolds*, 2023-Ohio-782, ¶¶ 15-16 (finding that juvenile courts are established by statute and possess only the jurisdiction expressly conferred by the General Assembly). And Article IV, Section 18 grants courts only such authority as is “directed by law.” Ohio Const., art. IV, § 18. Any shift in the law may well bring a corresponding shift in the types of cases being litigated in particular courts, but that does not indicate jurisdiction-stripping. Even if it did, that would not be a constitutional problem; Article IV, Section 18 guarantees no particular jurisdiction to Relator. *Id.* It is consistent with, rather than a violation of, Article IV, Section 18 for the jurisdiction of the juvenile courts to be changed by duly enacted laws—including, and perhaps especially, by constitutional amendment.

B. The Function of an Amendment Is to Amend the Constitution.

Even if this Court were inclined to credit Relator's claim that the Amendment strips him of jurisdiction, and even if that were cognizable as a basis of standing, his claim would still fail. A conflict between a constitutional amendment and the constitution as it existed before the amendment is a feature, not a bug. Amendments exist to change the constitution. Relator is simply describing the impact of a change in the constitution, not a constitutional infirmity in the Amendment itself.

Nor does the Amendment need to enumerate every single preexisting constitutional provision with which it might conflict in order to be enforceable. Ohio courts have previously held that "[w]hen a court construes a constitutional amendment, it must presume that those adopting the amendment had in mind existing constitutional or statutory provisions and their judicial construction, touching the subject dealt with in the amendment." *State v. Oliver*, 2021-Ohio-2543, ¶ 61 (12th Dist.) (citing *State v. Carswell*, 2007-Ohio-3723, ¶ 6). When a new constitutional provision does not state which other constitutional provisions it amends or supersedes, "it is as if it were writing in [the constitutional provision] in express terms that all provisions of the Constitution inconsistent with this expression of the will of the electors shall be regarded as amended or abrogated to the extent that may be necessary to give it full effect, which is the familiar rule for amendments and repeals by implication," *State ex rel. Young v. Cox*, 90 Ohio St. 219, 225 (1914) (citing *State ex rel. Cleveland, C., C. & St. L. Ry. Co. v. Creamer*, 83 Ohio St. 412, 435 (1911)). In other words, when there is a new amendment, all earlier constitutional provisions that are inconsistent with it must yield to it, not vice versa. *Vollmer v. Vill. of Amherst*, 65 Ohio App. 26, 32 (9th Dist. 1940) (citing *Cox* at 226-227), *aff'd*, 140 Ohio St. 257 (1942).

Finally, it is incorrect and wildly speculative to assume that the electorate was unaware of the Amendment and what it would do. However, since the Amendment neither modified the jurisdiction of the juvenile courts nor amended Article IV, Section 18 of the Constitution, as amicus has shown, there is no reason to delve further into the public's view or understanding of the Amendment here.

CONCLUSION

For the foregoing reasons, amicus curiae respectfully requests this Court to dismiss Relator's Petition for Writ of Mandamus.

Dated: May 11, 2026

Respectfully submitted,

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