

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *EX REL.*

JUDGE DAVID L. ENGLER

Relator,

v.

FRANK LAROSE, *et al.*,

Respondents

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CASE NO. 2026-0466

ORIGINAL ACTION IN
MANDAMUS

RELATOR'S MEMORANDUM IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS

Pursuant to S.Ct.Prac.R. 4.01(B)(1) and Civ.R. 6(C)(1), Relator David L. Engler hereby submits a memorandum in opposition to Respondents' motion to dismiss his petition for a writ of mandamus.

Respectfully submitted,



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MEMORANDUM IN OPPOSITION

I. INTRODUCTION

This case is about the fundamental right to be a parent. Today in Ohio, a fifteen-year-old girl needs a parent's consent to get a tattoo. R.C. §3730.06. She does not, however, need parental consent to have the medical procedure or medication for abortion. As a result of Article I, Section 22 Amendment to our Ohio Constitution in 2023, parental rights were dramatically curtailed, thus eliminating any need for R.C. § 2151.85 since parental consent for an abortion is not required.

Respondents' motion attempts to rewrite the Ohio Constitution by implication. They urge dismissal of a case alleging that *judicial-bypass proceedings*—historic adjudications governed by statute and rule—have effectively ceased. If Respondents are correct, an entire category of cases can vanish without explicit amendment to Article IV, and this Court loses power over an essential judicial function without any direct constitutional directive. This Court is the guardian of judicial power; it should not be a bystander to its quiet elimination.

Under Juv.R. 1(A), this Court mandates that juvenile courts adjudicate matters involving minors in a “*just*” and “*expeditious*” manner through a structured system. Respondents' position does not interpret that system—it *prevents* it from operating for bypass cases. The Constitution does not countenance such an implied nullification of judicial authority. Accordingly, the Motion to Dismiss should be *denied*.

II. RELATOR HAS STANDING

Relator is the juvenile-court judge of Trumbull County who alleges the *loss of a defined class of cases*—judicial-bypass petitions—as a direct result of Respondents' enforcement of

Article I, §22. This is not an abstract or generalized grievance; it is an actual *institutional injury* to the judicial office.

Ohio law recognizes that a public official has standing when governmental action directly impairs the exercise of official duties or authority unique to that office. For example, in *State ex rel. Tubbs Jones v. Suster*, a prosecutor was permitted to seek a writ to bar a court from exceeding its jurisdiction, reflecting that an official may pursue extraordinary relief to protect the lawful scope of the official's duties. 84 Ohio St.3d 70, 75 (1998). Compare also *State ex rel. Cleveland Mun. Court v. Cleveland City Council*, 34 Ohio St.2d 120, 126–28 (1973) (recognizing existing judges as proper relators to vindicate the court's essential functions in a funding dispute), and *State ex rel. Johnston v. Taulbee*, 66 Ohio St.2d 417, 419–20 (1981) (juvenile judge had standing to challenge legislative action impeding his court's operations). These precedents confirm that the *impairment of a judicial function constitutes a concrete and particularized injury* to the judge and the court itself.

Here, the alleged injury is the *effective elimination of Relator's jurisdiction over judicial-bypass cases*, as corroborated by his affidavit: since Article I, § 22 took effect, “*no judicial-bypass petitions have been filed, docketed, or heard*” in Relator's court, *and this cessation is directly tied to the Amendment's enforcement* (Engler Aff. ¶5–6). Relator does not seek to litigate general policy; he seeks to restore a *specific adjudicatory role assigned to his court by R.C. 2151.85*. The stakes are institutional: if the complete removal of a court's jurisdiction over a class of cases is not an injury, nothing is. The law does not demand that a judge “*wait to be personally aggrieved*” when the authority of the judicial office “*has already been extinguished.*”

III. RELATOR STATES A VALID CLAIM FOR MANDAMUS

To withstand dismissal, a mandamus petition must show: (1) a clear legal right to the requested relief; (2) a clear legal duty on Respondents' part to perform the act; and (3) the lack of an adequate remedy in the ordinary course of law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29 (1983). Relator meets all three elements.

A. Clear Legal Right — Juvenile Bypass Adjudications Remain Legally Required

Relator has a clear legal right to continue exercising the adjudicatory authority given to juvenile courts by statute and rule. *R.C. 2151.85* (the judicial-bypass statute) explicitly *vests jurisdiction in juvenile courts* to hear petitions by unemancipated minors for authorization of abortion without parental notification. That statute, enacted to comply with then-controlling federal constitutional requirements, remains valid Ohio law today and has not been repealed or amended by the General Assembly. Likewise, Juv.R. 1(A) underscores that juvenile-court proceedings, including bypass matters, are part of a unified judicial system for minors, intended to be fair and efficient. Until late 2023, Ohio's juvenile courts routinely held bypass hearings under these authorities. Relator's own court handled approximately two such cases per year (Aff. ¶4).

This bypass process was born of federal constitutional mandates that existed for over forty years. In *Bellotti v. Baird*, the U.S. Supreme Court held that a state which requires parental involvement must provide a “*confidential and expedited*” judicial bypass so a minor can prove maturity or best interests (443 U.S. 622, 643–644 (1979)). And in *Ohio v. Akron Center for Reproductive Health*, the Court reaffirmed that parental consent laws must include a bypass to ensure a parent has no “absolute, and possibly arbitrary, veto” over the minor's decision (497 U.S. 502, 510 (1990)). While *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022), overruled *Roe* and ended federal constitutional protection of abortion, these earlier cases remain

the reason *Ohio adopted R.C. 2151.85 and integrated bypass into its judicial system*. Thus, the bypass procedure is not some extraneous or discretionary function—it was established as a *necessary judicial proceeding* under Ohio law. Even after *Dobbs*, R.C. 2151.85 has not been repealed by the legislature. Accordingly, unless and until a competent authority declares it invalid, Relator’s court retains a right (indeed, an obligation) to conduct bypass adjudications according to that statute and applicable rules.

Moreover, *In re C.S.*, a decision of this Court, explicitly described juvenile-court proceedings as “*hearings, findings, [and] orders*” that are the core of judicial activity. 115 Ohio St.3d 267, 2007-Ohio-4919, ¶80. A bypass case undeniably falls into this category: the juvenile judge conducts a hearing, makes findings (on maturity or best interests), and issues an order. Thus, R.C. 2151.85 confers on Relator a clear legal right to perform these *core judicial acts*. Relator’s asserted right is not to compel private parties to file cases, but to avoid being *thwarted from exercising jurisdiction that the law places exclusively in his court*. The “clear right” at stake is the continued existence of this adjudicatory forum for minors. Permitting an executive-branch interpretation of Article I, § 22 to extinguish that forum would collapse the concept of a clear legal right in precisely the circumstance where it most needs protection.

Finally, Relator’s claim of right is further bolstered by the Ohio Constitution’s text. Article IV, §4(B) provides that juvenile courts are *established by law* with jurisdiction as “*provided by law*.” Here, that law is R.C. 2151.85. Nothing in Article I, §22 explicitly withdraws or reallocates that jurisdiction. Relator’s right to hear bypass cases therefore remains intact unless Article I, §22 *validly superseded* R.C. 2151.85. For reasons explained in Sections III.B and VIII below, the Constitution should not be construed to effect such a repeal by implication. At the motion-to-dismiss stage, Relator has more than sufficiently alleged a clear legal right.

B. Clear Legal Duty — No Implicit Elimination of Judicial Power

Relator also demonstrates a clear legal duty on Respondents' part. Respondents—state officers charged with implementing and giving effect to constitutional provisions—must do so in a manner consistent with the entire Constitution. *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373 (1917) established the important principle that constitutional provisions *must be read in harmony* whenever reasonably possible, so that each is given effect and no part is implicitly nullified. This principle imposes on Respondents a duty to “*administer and enforce*” Article I, §22 in a way that respects, rather than negates, the judiciary's powers under Article IV.

Indeed, it is well-settled that *core judicial functions cannot be reassigned or abolished by another branch absent a clear constitutional mandate*. *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 134 (2000) illustrates this: the Court struck down a statute (“bad time” in prison) by which the executive could lengthen sentences, holding it violated the separation-of-powers because it effectively allowed the executive to perform the judicial act of increasing punishment without explicit constitutional authority. This Court recognized in *State v. Bodyke*, 126 Ohio St. 3d 266, that it has “not hesitated to strike down provisions of law that either accrete to a single Branch powers more appropriately diffused among Branches or that undermine the authority and independence of one or another coordinate Branch” (citing *Mistretta v. United States* (1989), 488 U.S. 361). Likewise, in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 475 (1999), famously states that “[t]he Constitution does not permit one provision to silently extinguish another branch's authority.” Applying those principles here, Respondents have a *duty not to treat Article I, §22 as a self-executing abolition of bypass hearings* absent an express directive.

Stated differently, Respondents (including the Ohio Attorney General and officials who guide enforcement of state law) must implement the new Amendment consistent with the continuing viability of R.C. 2151.85 and Article IV's vesting of judicial power. Respondents' contrary stance—that Article I, §22 impliedly repealed R.C. 2151.85 and ousted juvenile courts of jurisdiction—*breaches the duty of harmonious interpretation*. Far from harmonizing, their position extinguishes a judicial function by implication.

Relator therefore seeks a writ compelling Respondents to perform the *clear legal duty to respect and not encroach upon judicial power*. Specifically, that means acknowledging that the bypass process persists unless and until the Constitution is explicitly amended or this Court declares a conflict. The duty claimed is rooted in the separation-of-powers and interpretive canons noted above, as well as in the Supreme Court's own authority over practice and procedure (e.g., via juvenile rules). Juv.R. 1(A) represents this Court's exercise of its Article IV powers to ensure all juvenile matters, including bypass proceedings, are handled justly. Respondents lack any lawful basis to unilaterally suspend that rule-governed process. Thus, Relator establishes a clear legal duty owed by Respondents.

C. No Adequate Remedy at Law

Mandamus is appropriate because *no plain or adequate remedy in the ordinary course of law exists*. Relator cannot get relief through normal litigation channels; indeed, the essence of the problem is that bypass cases *no longer come before any court* for adjudication. Without any bypass case being filed, *there is no opportunity for appeal or other standard review*. This is the kind of structural injury for which extraordinary writs are designed.

Ohio precedent confirms that when the issue is a *patent deprivation of jurisdiction*, *ordinary remedies are inadequate*. In *State ex rel. Adams v. Gusweiler*, this Court allowed prohibition notwithstanding an available appeal, because the lower court’s “total want of jurisdiction” made any appeal an insufficient remedy (30 Ohio St.2d 326, 328–29 (1972)). Here, by analogy, the bypass jurisdiction of juvenile courts has been completely stifled—there are *no cases to even appeal*—creating a remediless void absent mandamus relief.

Respondents’ assertion that Relator could have or should have pursued some other course (such as a pre-election challenge or waiting to be sued) is meritless. Once Article I, §22 took effect and was enforced to shut down bypass filings, *Relator had no means within the ordinary judicial process to contest that outcome*. The law does not insist that a judge suffer an enduring void in his docket with no recourse. Instead, the extraordinary remedy of mandamus is available to ensure that the laws (here, R.C. 2151.85 and related rules) are properly followed by those in charge of implementing them.

Finally, to the extent Respondents have pointed to an alleged technical defect in Relator’s Petition (the phrasing of his verification affidavit), that does not provide an “adequate remedy” either; rather, it is a *readily curable procedural issue*. The Ohio Rules of Civil Procedure and this Court’s precedent favor allowing amendment to cure such defects. See *State ex rel. Peterson v. Teodosio*, 34 Ohio St.2d 161, 175 (1973) (noting that defects in verification of a pleading may be corrected and should not preclude reaching the merits). Relator has provided sworn, first-hand facts (Aff. ¶¶3–8) establishing the bypass process has stopped and explaining the injury. Even if further verification were deemed needed, the appropriate course is to permit an amendment, not to dismiss outright. In short, no alternate remedy exists that would be *speedier or more effective* than the requested writ. Mandamus is therefore proper.

IV. THIS CASE IS RIPE AND JUSTICIABLE

The controversy is ripe. Relator alleges a *present, ongoing harm*: judicial-bypass proceedings “*have ceased entirely*” in his court (Aff. ¶5). That is a concrete injury that has already occurred and is continuing. A claim is ripe when the injury is real and immediate, not contingent or speculative. *State ex rel. Elyria Foundry Co. v. Indus. Comm’n*, 82 Ohio St.3d 88, 89 (1998). Here, the cessation of a category of cases is an accomplished fact, making the need for relief *immediate*.

Moreover, this dispute presents a *purely legal question*: how to interpret and reconcile a new constitutional amendment with existing judicial duties and statutes. That question is fit for judicial determination now. The lack of pending bypass cases does not make the issue abstract; it underscores that the alleged conflict *is already impacting the judicial system* (by halting cases that, until the Amendment’s adoption, would have been filed and heard). Thus, there is no prudential reason to delay or dismiss; the case is justiciable.

V. RESPONDENTS’ TIMELINESS ARGUMENT FAILS

Respondents incorrectly frame Relator’s action as a belated challenge to the ballot measure. In reality, this is an *as-applied challenge to current enforcement* of Article I, §22. Relator is not contesting the propriety of the ballot language per se, nor seeking to overturn the Amendment in general. Rather, he argues that, in *enforcing the Amendment*, Respondents have overstepped by treating juvenile-bypass proceedings as defunct. This claim *arose only after the Amendment’s adoption and enforcement*, making it timely now.

The Ohio Supreme Court has distinguished between *pre-election facial challenges* and *post-election as-applied challenges*. See *Wymyslo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-

Ohio-2187, ¶21 (facial attack on law must often be brought early, whereas as-applied claims ripen when the law is implemented against specific parties). Relator’s cause of action *could not have been brought before the Amendment was passed and applied*; until then, there was no actual conflict to adjudicate. Indeed, minors themselves have not mounted any challenge, likely because there is no proceeding in which they could do so. Thus, Relator’s suit is the proper vehicle, at the proper time, to resolve the constitutional and statutory interplay.

The 64-day pre-election filing rule (Ohio Const. Art. XVI, §1) for ballot language challenges does not bar this action. Relator does not seek to *undo the Amendment’s adoption*; he seeks a determination of how that Amendment should be enforced consistent with other law. In *Wymyslo*, this Court entertained businesses’ claims against the enforcement of a new law on them, even though they had not challenged the ballot measure itself prior to the election (132 Ohio St.3d 167, ¶21). Likewise, here, Relator’s enforcement-focused claim is timely and within this Court’s jurisdiction.

VI. RESPONDENTS’ VERIFICATION ARGUMENT FAILS

Respondents contend that Relator’s affidavit verifying the Petition is technically noncompliant with S.Ct.Prac.R. 12.02(B) because it uses the phrase “to the best of my knowledge and belief.” This hyper-technical argument does not warrant dismissal of the case.

First, Relator’s affidavit provides *specific, firsthand facts* strongly indicating personal knowledge. For example, he attests:

- “No judicial-bypass petitions have been filed, docketed, or heard [in Trumbull County Juvenile Court since January 1, 2025]” (Aff. ¶5).
- “The cessation of judicial-bypass proceedings is the direct result of the practical and legal effect of Article I, Section 22” (Aff. ¶6).

- “*The judicial office...has been stripped of a statutory and historically exercised judicial function*” (Aff. ¶8).

These statements come from the *sitting juvenile judge* who would handle such cases; they are manifestly based on his personal observation of his docket and duties. Thus, even if the phrasing is slightly inartful, the substance satisfies the purpose of verification: confirming that the allegations are grounded in competent knowledge.

Second, *Ohio law favors resolving cases on their merits over dismissing them on amendable procedural grounds*. If the Court deems the current affidavit deficient, the proper remedy is to allow Relator to file a clarified affidavit, not to dismiss the case. See *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175 (1973) (recognizing that a procedural defect in verification may be cured by amendment and does not deprive a court of jurisdiction to consider the claim). In contrast, the cases Respondents cite *State ex rel. Toledo Blade Co.* and *State ex rel. Sun Refining & Marketing Co.*, which involved *completely unverified filings or no evidence to support them*—a far cry from the detailed sworn affidavit supplied here. In short, Respondents’ verification argument elevates form over substance. The Court can readily permit a cure if necessary, but given the thorough evidence already presented, Relator’s filing substantially complies with the rule’s intent and should not be grounds for dismissal.

VII. RESPONDENTS’ POSITION DISMANTLES THE JUVENILE COURT SYSTEM

What is at stake is more than a technical jurisdictional point; it is the *eradication of a functioning judicial process* carefully crafted for minors. Over decades, Ohio’s judiciary has built a comprehensive framework to handle bypass petitions with due sensitivity and speed, reflecting their importance. Juvenile Rule 37(A) requires that juvenile proceedings (like bypass hearings) be maintained as *confidential*, and Sup.R. 45(E) restricts public access to juvenile-case records

absent a court order—protections clearly pertinent to the bypass context. These rules emanate from the Supreme Court’s authority over court administration and underscore that bypass cases were fully integrated into the judicial branch’s operations.

The Ohio Supreme Court has also acknowledged the *constitutional dimension of juvenile court procedures*. For instance, *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, ¶14, noted that juvenile courts act pursuant to constitutional principles and statutory mandates to protect minors’ interests under conditions set largely by the judiciary (like confidentiality and expeditious handling). Similarly, “under the doctrine of *parens patriae*, courts are entrusted to protect the best interest of children.” *Kelm v. Kelm* (2001), 92 Ohio St.3d 223, 224, 749 N.E.2d 299, citing *Kelm v. Kelm* (1993), 68 Ohio St.3d 26, 30, 623 N.E.2d 39. Judicial-bypass proceedings exemplify this principle: they ensure a neutral judge evaluates a minor’s capacity and best interests, rather than leaving the matter to unilateral executive or family control.

By treating bypass proceedings as “obsolete,” Respondents’ interpretation of the Amendment essentially *shutters this entire judicial sub-system*. The result is that:

- A *required adjudication* (under R.C. 2151.85) is no longer occurring;
- *Confidential, expedited court processes* for minors have been halted;
- The *judiciary’s role* in balancing minors’ rights and parental involvement has been eliminated without replacement.

This is not a mere adjustment in jurisdiction—it is a *systemic dismantling* of part of the juvenile-court’s constitutional and statutory function. Juv.R. 1(A) charges courts with ensuring a forum for the “just determination of every juvenile case.” Respondents’ position guarantees that the bypass subset of such cases *never even reaches the courtroom*. Such an outcome contradicts the purpose of that rule and the broader principles of justice and access to courts. It underscores

why Relator's plea is not just legally sound but necessary to preserve the integrity of Ohio's juvenile justice system.

VIII. SEPARATION OF POWERS IS VIOLATED

Fundamentally, Respondents' application of Article I, §22 violates separation-of-powers principles. The Ohio Constitution established three co-equal branches of government, each with distinct powers. Article IV, in particular, vests *judicial power in the courts*. This includes the power to adjudicate cases properly brought under the law. If Article I, §22 is enforced as Respondents suggest, it *nullifies a piece of the judicial power (the power to hear bypass cases) without any express constitutional command to do so*.

This Court has jealously guarded against one branch aggrandizing itself at the expense of another or hollowing out another branch's core functions. In *Sheward*, the Court invalidated legislation that attempted to rewrite tort law procedures, in part because it encroached on the judiciary's authority to govern court processes (86 Ohio St.3d at 494–95). Here, we have an even more stark scenario: not an ordinary statute, but a citizen-initiated Amendment that *says nothing about juvenile courts or bypass hearings*, yet which Respondents would wield to effectively erase a judicial role. To allow this would set a dangerous precedent: it would mean a constitutional amendment could *implicitly repeal parts of Article IV* or statutes under it, without ever mentioning them and without voters understanding that consequence. That outcome offends the rule from *Sheward* that one provision cannot be used to “*silently extinguish*” the authority of another branch (*id.* at 475).

Relator is not arguing that Article I, §22 is facially invalid. Instead, he contends that *if* the Amendment were construed as eliminating bypass proceedings, it would raise grave separation-of-powers issues. Thus, the Amendment should be read (and Respondents instructed) to avoid that result. This Court can and should interpret Article I, §22 in a manner that *respects the judiciary's constitutionally vested powers*, thereby maintaining constitutional equilibrium. In doing so, the Court follows the time-honored mandate that conflicts between constitutional provisions be resolved in a manner that gives effect to all, rather than nullifying one by implication (see *Myers*, 95 Ohio St. at 373). Any other approach—particularly the summary elimination of a judicial function by executive interpretation—would be a profound separation-of-powers violation.

IX. CONCLUSION

Relator's Opposition demonstrates:

- Judicial-bypass proceedings were a long-established part of Ohio's adjudicatory system, *required by prior law and implemented by statute and rule*;
- Article I, §22 contains no language explicitly terminating those proceedings or reallocating juvenile-court jurisdiction;
- Respondents' current approach to enforcement *improperly reads the Amendment in a vacuum*, ignoring Article IV and R.C. 2151.85, and thereby unlawfully disrupts the balance of powers; and
- Relator's facts are unrebutted: bypass cases have stopped entirely (Aff. ¶5), confirming the injury and the need for relief now.

This Court should reject Respondents' attempt to escape judicial review of these issues. The Motion to Dismiss should be *denied*. Ohio's Constitution, read as a whole, does not sanction the abrupt abolition of juvenile-court jurisdiction over bypass petitions by mere implication.

Relator's standing and the merits of his mandamus claim are clear. This Court should allow the

case to proceed so it can vindicate the principle that *no branch of government may surrender or usurp the judicial power without explicit authority.*

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by electronic mail on May 20, 2026, upon the following:

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