

In the  
**Supreme Court of Ohio**

PATRICIA CRAWFORD-COLE,	:	Case No. 2008-0462
	:	
Appellee,	:	
	:	On Appeal from the
v.	:	Lucas County
	:	Court of Appeals,
LUCAS COUNTY DEPARTMENT OF JOB	:	Sixth Appellate District
AND FAMILY SERVICES,	:	
	:	Court of Appeals Case
Appellant.	:	No. L-07-1188
	:	

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**MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO  
IN SUPPORT OF APPELLANT  
LUCAS COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES**

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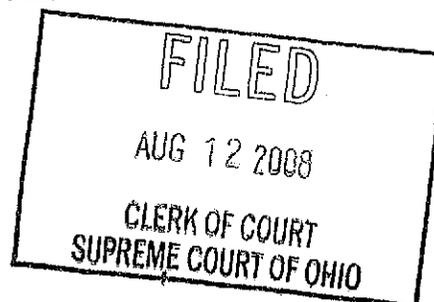
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<i>A court of common pleas does not have subject matter jurisdiction to hear an appeal under R.C. 119.12 if the appellant has failed to exhaust her administrative remedies. A party fails to exhaust when she does not request an administrative hearing by the relevant deadline; such a hearing is necessary to develop the case’s factual and legal issues and to allow an agency to apply its expertise to a case. ....</i>	
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## INTRODUCTION

The Court need only resolve one simple issue here: whether a *county* agency can somehow be considered a “state agency” under R.C. Chapter 119, the law that governs appeals of *state* agency decisions. The answer is no, because the statute defines state agencies to include only state-level agencies. County agencies simply cannot be shoehorned into that definition. Thus, when Appellant Lucas County Department of Job and Family Services (“Lucas JFS”) revoked a day-care license from Appellee Patricia Crawford-Cole, none of the processes involved—from the pre-hearing notice, to the deadline for requesting a hearing, to the process for appealing the revocation in the courts—should have been governed by Chapter 119. Instead, Crawford-Cole’s appeal should have been governed by Chapter 2506, which specifically applies to decisions by political subdivisions. Therefore, the Court should simply hold that Chapter 119 does not apply here, and it should remand for the lower court to assess whether the case survives in another form.

Specifically, the Court need not, and should not, reach the issue that the court below addressed, nor should it reach the State’s second proposition as *amicus* below. Both issues assume that Chapter 119 applies here, but because it does not, both issues evaporate. The court below addressed a perceived “conflict” between an administrative deadline contained in R.C. 119.07 and another one contained in O.A.C. 5101:2-14-40(C). Because Chapter 119 does not apply, that conflict disappears. Separately, the State has raised a second proposition, explaining why an administrative appellant who fails to request a hearing is not entitled to appeal any resulting loss to the courts under Chapter 119. Again, because Chapter 119 does not apply here, that issue disappears. While that issue is an important one, the Court should wait to resolve that critical Chapter 119 issue in an actual Chapter 119 case that raises it.

First, the law on the State’s first issue is straightforward: the Lucas *County* JFS is not a state agency, so Chapter 119 cannot apply here. True, the county here was acting under color of state law, as R.C. 5104.11 and 5104.011 confer on county JFS departments the duty to license and inspect “Type B day-care licenses.” But counties and other political subdivisions routinely carry out tasks assigned them by state law; that does not make them state agencies. And Chapter 119 plainly says that its processes are available only for appeals from final decisions of *state* agencies. In sharp contrast, the General Assembly has enacted a separate chapter for parties aggrieved by local government decisions to appeal to court: Chapter 2506. Thus, the proper mechanism for appeal from the revocation of a Type B day-care license by a county agency is to use R.C. Chapter 2506, not Chapter 119.

Second, if the Court somehow applies Chapter 119 here—though again, it should not—it should hold that Crawford-Cole’s failure to request a hearing precluded her from appealing to a court under R.C. 119.12. This Court has said that failure to exhaust administrative remedies in an administrative appeal is a jurisdictional defect; specifically, failure to invoke hearing rights or other rights in an administrative process forecloses the right to object later to the results of that process. *Noernberg v. City of Brook Park* (1980), 63 Ohio St. 2d 26, syllabus. Administrative appeals, by their very nature, rely on fact-finding and determinations of law by state and local agencies, so appellants must be required to invoke the hearing process if they wish to later challenge the results.

## STATEMENT OF AMICUS INTEREST

The State of Ohio has a strong interest in both issues. First, a state agency, the Ohio Department of Job and Family Services (ODJFS), promulgated Ohio Admin. Code 5101:2-14-40, the administrative rule that the court below struck down. The General Assembly empowered ODJFS to promulgate rules regarding day-care centers, including those day-care centers that the counties oversee, so ODJFS has a strong interest in seeing those rules upheld. R.C. 5104.011. Second, the State as a whole has an interest in seeing that Chapter 119 is not extended to provide appeal rights for decisions of county agencies. In addition, the Attorney General, who is required to represent “agencies” in proceedings pursuant to Chapter 119, has an interest in ensuring that her mandate is not somehow broadened to require representation of non-state agencies. That is, if local governments are defined as “agencies” for Chapter 119 purposes, and Chapter 119 requires the Attorney General to represent state agencies in those appeals, confusion might arise as to representation of the counties in Chapter 119 proceedings. Finally, the State and its agencies have an independent interest in the exhaustion issue because the issue, if stated as a rule of law governing Chapter 119 appeals, will apply to all agencies involved in such appeals.

## STATEMENT OF THE CASE AND FACTS

### **A. Crawford-Cole failed to operate her day-care center in a lawful manner.**

Patricia Crawford-Cole had a license to operate a “Certified Type B family day-care home” (Type B day-care). The Lucas County Department of Job and Family Services (Lucas JFS) issued the license on July 1, 2006. *Crawford-Cole v. Lucas County Dep’t of Job and Family Servs.* (6th Dist.), 2008 Ohio App. Lexis 325, 2008-Ohio-359 (“App. Op.”) (attached to Lucas JFS Merit Brief as Ex. 2), ¶ 2. This license permitted her to care for up to six children at a time and to receive funding from the county. R.C. 5104.01(F) & (SS). Within a month, Lucas JFS

discovered that Crawford-Cole was violating the terms of her license by caring for more than six children at a time. Lucas JFS confirmed that violation during a July 20, 2006, home visit, during which Lucas JFS discovered that there were *fourteen* children in Crawford-Cole's home simultaneously. App. Op. ¶ 3. Also, neither Crawford-Cole nor an authorized emergency caregiver was present at the time, in violation of O.A.C. 5101:2-14-14(A)(2)(3)(5)(7). See Lucas JFS Letter of July 24, 2006, attached as Ex. B to Affidavit of Patricia Crawford-Cole ("Crawford-Cole Aff."), filed Nov. 21, 2006, Common Pleas Record ("Rec.") 7.

Crawford-Cole called these "'rectifiable' violations" and said, "I take full responsibility for the noncompliant findings in my family childcare[.]" See Letter of Aug. 10, 2006 from Crawford-Cole to Lucas JFS, attached as Ex. C to Crawford-Cole Aff., Rec. 7, at 3.

**B. Crawford-Cole appealed her license revocation in the courts, but she had not asked for an administrative hearing.**

On July 24, 2006, Lucas JFS sent Crawford-Cole a letter, by certified mail, to notify her that it intended to revoke her Type B day-care license and that she had ten days to request a hearing. See App. Op. ¶ 4. Someone in her household signed for the certified mail. *Id.* Crawford-Cole later explained that she was out of town on the day the certified mail arrived and that she "did not notice the certified mail notification of revocation for several days after returning to Ohio—until it was too late under the 10 day limitation to commence an appeal." Crawford-Cole Mem. in Opposition to Appellee's Motion to Dismiss, filed Nov. 21, 2006, Rec. 6, at 4.

On August 3, 2006, after the period for seeking a hearing expired and before Lucas FJS heard her claim that she had not received the notice, Lucas JFS terminated Crawford-Cole's license. See App. Op. ¶ 5. On September 27, 2006, Crawford-Cole filed a notice of administrative appeal with the Lucas County Court of Common Pleas. See Notice of Appeal,

filed Sept. 27, 2006, Rec. 1. Crawford-Cole did not specify the provision of the Revised Code upon which her appeal was based.

**C. The common pleas court dismissed her appeal, and the appeals court reversed.**

Lucas JFS moved to dismiss Crawford-Cole's appeal. Lucas JFS argued that the court of common pleas did not have jurisdiction to hear an appeal under R.C. 2506.01 because Crawford-Cole had not requested a hearing below. Motion to Dismiss, filed Oct. 23, 2006, Rec. 3. Crawford-Cole opposed this motion, arguing that that the appeal was taken properly under R.C. 119.12. Mem. in Opp. to Motion to Dismiss, filed Nov. 21, 2006, Rec.6.

The common pleas court dismissed her appeal, concluding that it did not have subject matter jurisdiction because Crawford-Cole, by not seeking an agency hearing, had not exhausted her administrative remedies. App. Op. ¶ 7.

The Sixth District reversed, concluding that the common pleas court did have jurisdiction. *Id.* at ¶ 27. The appeals court held that Crawford-Cole should have been given thirty days to request an administrative appeal under R.C. 119.07, instead of the ten days afforded under O.A.C. 5101:2-14-40(C). *Id.* at ¶¶ 23-24. The Sixth District suggested that the administrative rule was unconstitutional because it surpassed legislative authority by contradicting a statute. *Id.* at ¶ 23 (citing *Midwestern Coll. of Massotherapy v. Ohio Med. Bd.* (10th Dist. 1995), 102 Ohio App. 3d 17, 23). The Sixth District also ruled that exhaustion of administrative remedies "is not a necessary prerequisite to an action, such as the one at hand, which challenges the constitutionality of an administrative rule." *Id.* at ¶ 23 n.2 (citing *Derakhshan v. State Med. Bd. of Ohio* (10th Dist.), 2007 Ohio App. Lexis 5802, 2007-Ohio-5802).

Lucas JFS asked this Court to accept jurisdiction, and the State of Ohio filed an amicus brief in support of Lucas JFS. This Court accepted jurisdiction of this appeal. *6/18/2008 Case Announcements*, 2008-Ohio-2823.

## ARGUMENT

### *Amicus Curiae* State of Ohio's Proposition of Law No. 1:

*Ohio's administrative procedure law for state agencies, R.C. Chapter 119, applies only to state agencies and not to county agencies, so it does not apply when a county department of job and family services revokes a Type B day-care license.*

**A. R.C. Chapter 119 applies only to state agencies, not to county agencies such as Lucas JFS.**

The court below was wrong in reasoning that the ten-day timeframe found in O.A.C. 5101:2-14-40(C) conflicted with the thirty-day requirement found in R.C. 119.07. That conflict cannot arise because none of Chapter 119, including R.C. 119.07, even applies here. Thus, R.C. 119.07's deadline does not apply to an appeal from a county's decision to revoke a Type B day-care license.

The plain text of R.C. 119.01(A) limits the application of the chapter to state agencies. It provides:

"Agency" means, except as limited by this division, any official, board, or commission having . . . the licensing functions of any administrative or executive officer, **department**, division, bureau, board, or commission of the government of **the state** having the authority or responsibility of issuing, suspending, revoking, or canceling licenses.

R.C. 119.01(A)(1) (emphasis added). The statute does not mention counties or political subdivisions.

The fact that the General Assembly listed only entities representing the "government of the state" under R.C. 119.01(A)(1) indicates that the General Assembly excluded counties from the operation of Chapter 119. If the General Assembly wanted to make the provisions of Chapter 119 apply to county decisions or actions, it could have done so easily. As this Court has explained, "the express inclusion of one thing implies the exclusion of the other." *Myers v. Toledo*, 110 Ohio St. 3d 218, 2006-Ohio-4353, ¶ 24.

The General Assembly certainly knows how to subject counties or other local governments to a statute when it wishes, and it has done so in other contexts. For example, the General Assembly included protections for both county and state employee whistleblowers by defining an employer to include “an agent of an employer, the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality thereof.” R.C. 4113.51(D). Likewise, the General Assembly included the term “county” when it defined “public employer” for labor-relations purposes. R.C. 4117.01(B) (public employer includes both any “county” and “any state agency”). Thus, the General Assembly’s decision to list county and state agencies separately in other laws shows that the General Assembly did not intend to include counties when it specified that Chapter 119 applies only to state entities.

The exclusion of counties and other local governments from the scope of “state agencies” under Chapter 119 is confirmed by R.C. 119.10’s requirement that the Ohio Attorney General represent any agency in a proceeding under Chapter 119. “[T]he attorney general or any of his assistants or special counsel who have been designated by him shall represent the agency.” R.C. 119.10. If county entities are “agencies” for purposes of Chapter 119, the Attorney General would have to represent those county departments during proceedings. But such a result conflicts with R.C. 109.02, which defines the Attorney General as “the chief law officer for the state and all its departments.” And such an interpretation also conflicts with R.C. 309.09(A), which provides that county prosecuting attorneys must “prosecute and defend all suits and actions which any such officer or board directs or to which it is a party[.]”

Finally, Chapter 119 cannot apply to counties or other local governments because the General Assembly has enacted a separate chapter, Chapter 2506, to govern administrative

appeals from local government decisions. That chapter would be superfluous if local governments were already governed by Chapter 119. And as shown below, Chapter 2506 applies here, not Chapter 119.

**B. R.C. Chapter 2506 is the proper avenue for appeal when a county revokes a license for a Type B day-care home.**

Holders of Type B day-care licenses are not left with no means to appeal. The General Assembly has provided a separate appeal mechanism for county decisions. Individuals who are unhappy with a county's decision to revoke a Type B day-care license have a right to appeal under R.C. Chapter 2506.

Several courts have incorrectly applied Chapter 119 rather than Chapter 2506 to proceedings involving a county's revocation of a Type B day-care license, but those courts were simply wrong. Most of the appellate districts did not discuss the reason that they applied R.C. Chapter 119. See, e.g., *Cosby v. Franklin County Dep't of Job and Family Servs.* (10th Dist.), 2007 Ohio App. Lexis 5818, 2007-Ohio-6641; *Miller v. Crawford* (7th Dist.), 2006 Ohio App. Lexis 4610, 2006-Ohio-4689; *Child Care Provider Certification Dep't v. Harris* (8th Dist.), 2002 Ohio App. Lexis 3864, 2002-Ohio-3795. The two districts that explained their rationale for applying R.C. Chapter 119 either (1) relied on administrative language that is no longer applicable or (2) incorrectly concluded that ODJFS had delegated its duty to the counties, and that delegation triggered Chapter 119. Both rationales are wrong.

The Second District held that proceedings to revoke a Type B day-care license were subject to appeal under R.C. 119, relying on an administrative provision that is no longer in place. In *Gamblin v. Montgomery County Dep't of Human Servs.* (2nd Dist. 1993), 89 Ohio App. 3d 808, 813, the court relied upon language in the former version of O.A.C. 5101:2-14-06 that required "the revocation of Type B certificates to be in conformity with R.C. 5104.03's procedures for

Type A licenses[.]” *Gamblin*, 89 Ohio App. 3d at 811. The *Gamblin* court concluded that this indirect reference to R.C. 5104.03 incorporated the appeal provisions of R.C. 119.12. This language, however, was removed in 1996. The current version of the rule does not include any references to R.C. 5104.03.

The Sixth District also incorrectly concluded, in an earlier case, that Chapter 119 applies to appeals of Type B license revocations, based on the “delegation” theory—that ODJFS has delegated its duty to supervise Type B day-care homes to the counties. *McTee v. Ottawa County Dep’t of Human Servs.* (6th Dist. 1996), 111 Ohio App. 3d 812, 816. But ODJFS has *not* delegated any duties. The General Assembly directly placed the duty of licensing and supervising certified Type B day-care homes on the county departments of job and family services:

“Certified type B family day-care home” and “certified type B home” mean a type B family day-care home that is **certified by the director of the county department of job and family services** pursuant to section 5104.11 of the Revised Code to receive public funds for providing child care pursuant to this chapter and any rules adopted under it.

R.C. 5104.01(F) (emphasis added).

At the same time, the General Assembly authorized ODJFS to promulgate regulations to implement the provisions of R.C. Chapter 5104. “The director of job and family services shall adopt rules pursuant to Chapter 119 of the Revised Code governing the certification of type B family day-care homes.” R.C. 5104.011(G). In the same provision, the General Assembly expressly placed the burden to supervise Type B day-care homes on the counties. “[A] county department of job and family services shall inspect the home and shall grant limited certification to the provider if the provider meets the requirements of this division.” R.C. 5104.011(G)(2). As a result, ODJFS has not delegated any duties to the counties regarding Type B day-care homes. The General Assembly directly placed those duties upon the counties.

In sum, Chapter 119 does not apply to county agencies, but Chapter 2506 does.

**C. Because Chapter 119 does not apply, the Court should not address either the “conflict” that the appeals court addressed or the State’s second issue, regarding the jurisdictional impact of failure to request a hearing.**

If the Court agrees, as it should, that Chapter 119 does not apply, then it should not address either the Lucas JFS’s proposition of law or the State’s second proposition. First, if Chapter 119 does not apply, then R.C. 119.07 does not provide a relevant deadline, and thus no conflict exists with the only applicable deadline—the one found in O.A.C. 5101:2-14-40(C). Second, if Chapter 119 does not apply, the Court also should not address the issues that the State covers below regarding failure to request a hearing. The State addresses those issues only to cover the possibility that the Court will apply Chapter 119 here. Although those issues are important ones, they should be resolved in a case that squarely presents them.

**Amicus Curiae State of Ohio’s Proposition of Law No. 2:**

*A court of common pleas does not have subject matter jurisdiction to hear an appeal under R.C. 119.12 if the appellant has failed to exhaust her administrative remedies. A party fails to exhaust when she does not request an administrative hearing by the relevant deadline; such a hearing is necessary to develop the case’s factual and legal issues and to allow an agency to apply its expertise to a case.*

**A. The Court had already held that failure to exhaust administrative remedies is a jurisdictional bar in administrative appeals, but that rule has been unclear since the Court took a different approach in a declaratory judgment case.**

The Court has explained that it is “long settled . . . that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.” *Jones v. Chagrin Falls* (1997), 77 Ohio St. 3d 456, 462 (quoting *Myers v. Bethlehem Shipbuilding Corp.* (1938), 303 U.S. 41, 50-51). That is, parties are required to exhaust their administrative remedies. The question, then, is what happens when a party does not exhaust her remedies, but goes to court anyway. While that failure is always a barrier of some sort, the barrier must be classified as (1) jurisdictional or (2) an affirmative defense, which

is non-judicial. A key difference between jurisdictional bars and affirmative defenses is that the latter can be waived by an opponent, or a party might overcome the defense in some cases. A jurisdictional bar, by contrast, is always fatal for a party. It can be raised at any time by an opponent, and courts can and should raise it sua sponte. As explained below, it is unclear whether the Court's precedent currently designates a failure to exhaust as a jurisdictional bar, when a party fails to seek a hearing on a matter but then seeks to challenge the resulting decision in that same matter.

This issue once seemed settled, because the Court expressly held that failure to exhaust was a jurisdictional failure when a party sought to pursue an administrative appeal after not properly exhausting the right administrative path. See *Noernberg v. City of Brook Park* (1980), 63 Ohio St. 2d 26, syllabus. In *Noernberg*, a party sought, in one administrative appeal, to seek relief that it should have pursued in a different administrative appeal. In rejecting that attempt, the Court held that a "Court of Common Pleas has no jurisdiction" where the appellant "fails to file an available administrative appeal[.]" *Id.* That language suggests that the Court had already resolved the issue, and that failure-to-exhaust is jurisdictional, at least where administrative appeals are concerned.

But in a later case, the Court held that a failure to exhaust administrative remedies is *not* a jurisdictional bar when a party files a declaratory judgment action. *Jones*, 77 Ohio St. 3d at 462. In *Jones*, the Court specifically explained that failure to exhaust was an affirmative defense instead: "the doctrine of failure to exhaust administrative remedies is not a jurisdictional defect to a declaratory judgment action; it is an affirmative defense that may be waived if not timely asserted and maintained." *Id.*

But the Court did not cite or discuss *Noernberg* in its *Jones* decision, so it is unclear if *Jones* affected *Noernberg*, and if so, how. Perhaps *Jones*'s language about exhaustion as non-jurisdictional overruled *Noernberg*. Or, perhaps *Jones*'s declaratory-judgment context, coupled with the fact that *Noernberg* was not mentioned, means that *Jones* merely set a different rule for declaratory judgments, while *Noernberg* still governs administrative appeals and makes exhaustion a jurisdictional requirement for such cases.

The appellate districts have split on this issue. Compare *Aliff v. Unemployment Comp. Review Comm'n* (8th Dist.), 2003 Ohio App. Lexis 1093, 2003-Ohio-1155, ¶ 29, with *Derakhshan*, 2007-Ohio-5802, ¶ 24. As explained below, if the Court revisits the issue, it should find that failure to exhaust—or, more specifically, a failure to invoke a hearing in an administrative process—is jurisdictional and fully prevents a party who does not invoke her hearing rights from later challenging the outcome of that hearing.

**B. Exhaustion of administrative remedies should be jurisdictional in administrative appeals.**

**1. Administrative appeals are premised on the fact that administrative agencies will first determine the facts and law.**

In an administrative appeal, a party typically requests a hearing and then appeals from the agency's final decision. The courts of common pleas then sit as appellate courts. In an appeal under R.C. 119.12, the courts are limited to reviewing whether the agency's decision is supported by reliable, probative, and substantial evidence and is in accordance with law. Thus, the General Assembly has empowered agencies to develop the facts and law, and it has limited the power of the courts to then review that process, not to start a new case from scratch.

The special importance of exhaustion in administrative appeals is highlighted by the “twin purposes” of the exhaustion doctrine: “protecting administrative agency authority and promoting judicial efficiency.” *McCarthy v. Madigan* (1992), 503 U.S. 140, 145; see also *Dworning v. City*

of *Euclid*, 2008 Ohio App. Lexis 1768, 2008-Ohio-3318, ¶ 9. The exhaustion doctrine “is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently[.]” *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St. 3d 109, 111-112 (quotations and citations omitted). Requiring parties to exhaust “also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to programs it administers before it is haled into . . . court.” *McCarthy*, 503 U.S. at 145; see also *Woodford v. Ngo* (2006), 548 U.S. 81.

This latter requirement is particularly important in the context of an administrative appeal. By allowing a party to “appeal” a decision with no development of the factual and legal record, the courts are necessarily interfering with the agency process. Moreover, the agency loses the opportunity to correct any errors that it might have made.

Establishing exhaustion as a jurisdictional prerequisite to administrative appeals fits into the scheme the General Assembly envisioned. The state and local agencies will develop the facts and give their interpretation of the governing laws and rules. The courts will act as appellate courts, reviewing the record created by the agency. The courts will not upset the agency’s factual findings if they are supported by the record (the precise standard of deference will vary depending on the specific appeal). See, e.g., *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108. And the courts defer to legal interpretations of the statutes and rules that the agency administers. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St. 3d 683, 687.

In short, allowing parties to appeal without first exhausting agency-level administrative remedies upsets the scheme created by the General Assembly, while strictly enforcing the requirement ensures that the agency process, and the purpose of that process, is honored.

**2. Exhaustion of agency-level administrative remedies serves judicial economy.**

In addition, exhaustion of agency-level administrative remedies in administrative appeals promotes judicial economy. The exhaustion doctrine aids judicial efficiency in several ways. “When an agency has the opportunity to correct its own errors, a judicial controversy may well be mooted, or at least piecemeal appeals may be avoided.” *McCarthy*, 503 U.S. at 145. The requirement to exhaust allows an agency to “afford the parties and the courts the benefits of its experience and expertise, and to compile a record which is adequate for judicial review.” *Nemazee*, 56 Ohio St. 3d at 111-112 (quotations and citations omitted).

Indeed, such an administrative adjudication could forestall the need for an appeal at all in many cases. If, as happened here, a party claims that an agency rule conflicts with a statute or constitutional provision, the agency should first have a chance to interpret its regulations in such a way to avoid or minimize any conflict. The agency should also have the chance to decide the issue on other factual or legal grounds, avoiding the conflict or constitutional issue or other thorny problem. A party who bypasses a step at the agency could force courts to address issues that need not, or should not, be addressed.

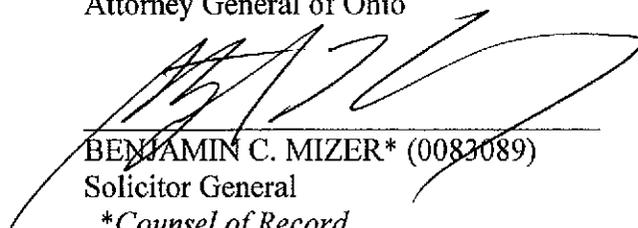
For these reasons, the Court should hold, if it reaches the issue, that a party who fails to request a hearing is jurisdictionally barred from later challenging the result of that hearing. But as explained above, the Court should not reach this issue, as it should hold that Chapter 119 does not even apply to decisions made by a county agency, and it should remand the case to be reassessed under the proper law.

**CONCLUSION**

For the above reasons, this Court should reverse the judgment below and remand for further proceedings.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

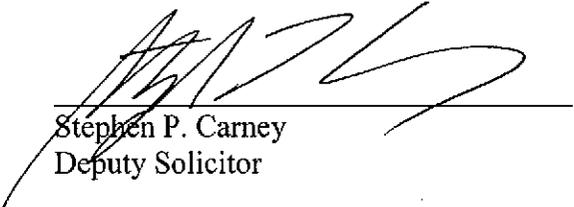
I certify that a copy of the foregoing Merit Brief of Amicus Curiae State of Ohio in Support of Appellant Lucas County Department of Job and Family Services was served by U.S. mail this 12th day of August, 2008, upon the following counsel:

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