

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. WILLIAM D. MASON,  
Cuyahoga County Prosecuting Attorney

Relator,

v.

NANCY MARGARET RUSSO,  
Judge, Cuyahoga County Common Pleas Court

Respondent.

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: Case No. 2012-1128  
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: Original Action in Prohibition  
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MOTION FOR LEAVE TO FILE AMICUS CURIAE MEMORANDUM IN SUPPORT  
OF RELATOR'S PETITION FOR IMMEDIATE ALTERNATIVE WRIT

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NANCY MARGARET RUSSO, JUDGE,  
CUYAHOGA COUNTY COURT OF  
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SUPREME COURT OF OHIO

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On July 3, 2012, Relator, Cuyahoga County Prosecuting Attorney William D. Mason, filed a Petition and Complaint for Writ of Prohibition and Application for Immediate Alternative Writ against Cuyahoga County Court of Common Pleas Judge Nancy Margaret Russo. In his Petition, Relator alleges that Judge Nancy Margaret Russo violated the separation of powers doctrine when she issued injunctive relief “that interferes with Relator’s prosecutorial discretion to bring criminal charges.” (Complaint, ¶ 1). While “an amicus curiae may file a merit brief in an original action without leave of court,” the amicus curiae must first seek leave “to file a memorandum before an alternative writ is granted.” *State ex rel. Duke Energy Ohio, Inc. v. Hamilton County Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶11 (internal citations omitted). Ohio Attorney General Mike DeWine seeks leave to file a Memorandum in Support of Relator’s Request for Immediate Alternative Writ because Respondent violated the doctrine of separation of powers.

“While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶42 (quoting *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158-159, 503 N.E.2d 136 (1986)). “It ‘represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three branches.’” *Id.* (quoting *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶114).

The Attorney General is the “chief law officer for the state and all of its departments.” R.C. 109.02; *State ex rel. Merrill v. Ohio Dep’t of Natural Res.*, 130 Ohio St. 3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶33. As a result, “[t]he attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested.” *Id.* (quoting R.C. 109.02). The state has a direct interest in ensuring that common pleas judges do not overstep the confines of their powers conferred by Section 4, Article IV of the Ohio Constitution, such that they run afoul of the separation of powers doctrine. As the chief law officer, it is incumbent upon Ohio Attorney General Mike DeWine to involve himself in civil cases to protect the constitutional separation of powers wherever possible. Based on the events that took place in Cuyahoga County Common Pleas Case Nos. 12-CV-785188 and 12-CV-784234, the Attorney General hereby exercises his power as the chief law officer and seeks leave to file a Memorandum in Support of Relator’s Request

for Immediate Alternative Writ in order protect the integrity of the tripartite government structure ensured by the separation of powers doctrine.

Moreover, in *State ex rel. Duke Energy Ohio, Inc.*, this Court granted a motion for leave to file an amicus curiae memorandum before the alternative writ was granted because the amici was a party to the underlying Hamilton County action. Similarly, the Attorney General was named as a Defendant in *AMA Ventures Inc., et al. v. Mason, et al.*, Case No. 12-CV-785188, one of the two cases pending before Judge Russo.<sup>1</sup> In fact, Ohio Attorney General Mike DeWine is also subject to the temporary restraining orders issued by Judge Nancy Margaret Russo.

For these reasons, Ohio Attorney General Mike DeWine respectfully requests that he be granted Leave to file a Memorandum in Support of Relator's Request for Immediate Alternative Writ, a copy of which is attached to this Motion. A proposed Order is also attached to this Motion for the convenience of this Court.

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<sup>1</sup> On July 5, 2012, AMA Ventures, Inc. dba Internet Galaxy, a plaintiff in the underlying state court action captioned Cuyahoga County Case No. 12-CV785188, filed a notice of voluntarily dismissal of defendant, Ohio Attorney General Mike DeWine, pursuant to Ohio Civ.R. 41(a). However, J&C Marketing, LLC, also a Plaintiff in the 12-CV-785188 case, has yet to dismiss the Ohio Attorney General from that action. As such, the Attorney General is still a party to the action and is subject to the TRO issued by Respondent Judge Russo.

Respectfully Submitted,

MIKE DeWINE  
Ohio Attorney General



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I. INTRODUCTION

Amicus Curiae, Ohio Attorney General Mike DeWine, files this amicus curiae memorandum in support of Relator, Cuyahoga County Prosecutor William D. Mason's, request for an immediate alternative writ "staying all proceedings before Respondent relating to the issuance of a TRO," (Petition for Writ of Prohibition, at ¶¶ 43-44), in *J&C Marketing, LLC v. William D. Mason*, Case No. CV-12-784234 and *AMA Ventures, Inc., et al. v. William D. Mason, et al.*, Case No. CV-12-785188. By issuing a temporary restraining order, prohibiting the Cuyahoga County Prosecutor from criminally prosecuting businesses operating "Internet Sweepstakes Cafes," and subjecting the Relator to discovery and potential depositions, Respondent has exercised judicial power that is in violation of the separation of powers doctrine, and thereby unauthorized by law. To prevent further upheaval of the criminal justice system in Cuyahoga County, this Court should issue an immediate alternative writ, which by operation of S.Ct.Prac.R. X(6), stays the proceedings before Respondent Judge Russo.

## II. STATEMENT OF FACTS

This action arises from two consolidated cases filed with Cuyahoga County Common Pleas Judge Nancy Margaret Russo, *J&C Marketing, LLC v. William D. Mason*, Cuyahoga County Case No. CV-12-784234 and *AMA Ventures, Inc., et al. v. William D. Mason, et al.*, Cuyahoga County Case No. CV-12-785188. For purposes of issuing an alternative writ, the following facts, which are plead in Relator's Petition and Complaint, are presumed to be true.<sup>1</sup> The plaintiffs in the underlying actions operate businesses that they refer to as "Internet Sweepstakes Cafes." Internet Sweepstakes Cafes are retail establishments often located in shopping centers or strip malls, which operate computerized gambling devices. For a price (usually \$20.00) a customer is provided with gambling "credits" and permitted to sign onto a computer terminal which is programmed to simulate a video slot machine. In order to create the illusion that such activity is not gambling, retail vendors purport to sell customers "Internet time" or "long-distance pre-paid phone cards," and the money used to purchase such items is loaded into the video game as gambling credits or tokens. Depending upon the customer's luck at playing the video slot machines, he can win more credits or tokens which can be redeemed for cash or more gambling time. The software employed by those companies is developed by a company known as VS2 Worldwide Communications, LLC.

On May 30, 2012, a Cuyahoga County Grand Jury indicted 10 individuals and 7 companies in a 70-count indictment for operating, or working in close cooperation with, the owners of an intricate internet gambling system known as "VS2." The indictment is pending before the Cuyahoga County Court of Common Pleas under Case No. CR 563092.

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<sup>1</sup> See *State ex rel. Duke Energy Ohio, Inc. v. Hamilton County Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶¶13-14.

On May 30, 2012, the same day that the aforementioned criminal indictments were returned, Relator sent a letter to numerous retail business establishments in Cuyahoga County known to be operating Internet Sweepstakes Cafés. The letter issued by Relator warned those retail establishments that they could be subject to criminal prosecution if they did not cease illegal gambling activities. The letter simply warned of future prosecution, but did not threaten the recipients with prosecution, nor did it shut their businesses down. It simply requested that they cease the portion of their business operations that violated R.C. 2915.02(A)(2).

In response, on June 4, 2012, J&C Marketing, LLC, filed the first of the aforementioned actions in the Cuyahoga County Court of Common Pleas. J&C Marketing, LLC also filed a Motion for Temporary Restraining Order against Relator in his capacity as Cuyahoga County Prosecutor. In that case, which was captioned as Case No. 12-CV-784234, J&C Marketing alleges that it is operating non-VS2 software, different than those indicted, which were operating VS2 software on their sweepstakes machines.

On June 13, 2012, Respondent Judge Russo held a hearing, at the conclusion of which she issued a temporary restraining order as requested by J&C Marketing, LLC. In accordance with the temporary restraining order, plaintiffs from the underlying state court action are permitted "to re-open immediately." Following the hearing on June 13, 2012, numerous owners of Internet Sweepstakes Cafés have sought and been granted plaintiff-intervenor status by Respondent Judge Russo. Thereafter, Judge Russo has issued substantially similar journal entries granting the TRO as to the intervenors.

A similar action was filed by AMA Ventures, Inc. on June 18, 2012, which was captioned as Case No. 12-CV-785188. Judge Russo consolidated the cases and began issuing the same temporary restraining orders. Respondent Judge Russo continued to hold hearings on June

18, 2012, June 22, 2012, and June 25, 2012. During the June 25, 2012 hearing, Respondent abandoned any pretense of separation between the subject matter of the criminal case and her TRO when she chose to allow plaintiffs using the VS2 software, which is the subject of the pending criminal litigation, to intervene in the non-VS2 civil litigation. Also at that hearing, Judge Russo indicated that she may allow the parties to depose the Relator. (June 25, 2012 Transcript, at pp. 95-97, attached to Relator's Complaint as Exhibit 10).

On June 28, 2012, Relator filed a Motion for Protective Order seeking to prevent discovery from proceeding in accordance with the TRO orders issued by Respondent Judge Russo. However, Respondent, in large part, denied Relator's Motion for Protective Order on July 1, 2012. Relator then filed this Petition and Complaint for Writ of Prohibition and Application for Immediate Alternative Writ on July 2, 2012.

### **III. ARGUMENT**

#### **A. Relator Pled All Three Elements Required for a Writ of Prohibition.**

Relator meets all three elements required for a writ of prohibition to issue such that this Court should grant Relator's request for an immediate alternative writ. For a writ of prohibition to be granted, the relator must establish that (1) the common pleas court is "about to exercise judicial power,"<sup>2</sup> (2) the exercise of power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law." *State ex rel. Duke Energy Ohio, Inc. v. Hamilton County Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶16, citing *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633, ¶25; see also, *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15, 740 N.E.2d 265. In the context of a Writ of Prohibition, "issuance of

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<sup>2</sup> Prohibition operates to prevent future unauthorized exercises of judicial authority, and to correct the results of previously unauthorized actions. See *State ex rel. Rogers v. Brown*, 80 Ohio St. 3d 408, 410, 686 N.E.2d 1126 (1997), citing *State ex rel. Litty v. Leskovyansky*, 77 Ohio St.3d 97, 98, 671 N.E.2d 236, 238 (1996).

an alternative writ in a prohibition case stays proceedings in the action sought to be prohibited until final determination of the Supreme Court.” S.Ct.Prac.R. X(6). The Court has established a fairly low standard for issuing such an alternative writ whereby after “presuming the truth of all material factual allegations of [the] complaint, and making all reasonable inferences in its favor . . . it appears that [Relator’s] prohibition claim **may** have merit, we will grant an alternative writ and issue a schedule for the presentation of evidence and briefs.” *State ex rel. Duke Energy Ohio, Inc.*, 2010-Ohio-2450 at ¶¶13-14, citing *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 227, ¶8). Based upon this standard, this Court should immediately issue an alternative writ, which by operation of S.Ct.Prac.R. X(6), stays the proceedings in Case Nos. 12-CV-784234 and 12-CV-785188 that are currently before Respondent.

**1. Respondent exercised judicial power.**

“[T]his court has determined the issuance of injunctive relief to be an exercise of judicial power sufficient to establish the first element of the prohibition standard.” *State ex rel. Lomaz v. Court of Common Pleas*, 36 Ohio St. 3d 209, 212, 522 N.E.2d 551; *see also, State ex rel. Northern Ohio Tel. Co. v. Winter*, 23 Ohio St. 2d 6, 8, 260 N.E.2d 827 (1970) (holding “the issuance of a temporary restraining order represents an assumption of jurisdiction by the Court of Common Pleas and involves the exercise of judicial power”). In this case, Respondent Russo issued injunctive relief in the form of a temporary restraining order against the Cuyahoga County Prosecutor, which fulfills the first prong required for a writ of prohibition to issue.

**2. The judicial power exercised by Respondent was unauthorized by law.**

Respondent Russo’s conduct, which pre-adjudicates the legality of alleged criminal conduct and interferes with the prosecutor’s executive discretion, violates Ohio’s doctrine of separation of powers. “While Ohio, unlike other jurisdictions, does not have a constitutional

provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶42, quoting *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158-159, 503 N.E.2d 136 (1986). “It ‘represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three branches.’” *Id.*, quoting *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶114. “It is inherent in our theory of government ‘that each of the three grand divisions of the government, must be protected from the encroachments of the others, so far that its integrity and independence may be preserved \* \* \*.’” *State v. Hochhausler*, 76 Ohio St.3d 455, 463, 668 N.E.2d 457 (1996). Based on these principles, “[t]he separation-of-powers doctrine requires that each branch of government be permitted to exercise its constitutional duties without interference from the other two branches of government.” *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 372, 2006-Ohio-1825, 858 N.E.2d 472.

Relator, the Prosecuting Attorney of Cuyahoga County, is an official within the executive branch of state government. *State v. Shaffer*, 11th Dist. No. 2009-G-2929, 2010-Ohio-6565, 2010 Ohio App. LEXIS 5416, ¶48; *State v. Hall*, 2nd Dist. No. 99 CA 94, 2000 Ohio App. LEXIS 328 at \*\*3-4 (Feb. 4, 2000); *see also State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790, 864 N.E.2d 630, at ¶¶35, 41. Respondent Russo is a duly elected Judge of the Court of Common Pleas for Cuyahoga County, Ohio, whose independent office falls within the judicial branch of state government. *Hall, supra*.

In *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 1996-Ohio-228, 661 N.E.2d 180, this Court explained that “[t]he decision whether to prosecute is discretionary, and not generally subject to judicial review.” *Id.* at 27, citing *Ohio Assn. of Pub. School Emp., Chapter 643, AFSCME, AFL-CIO v. Dayton City School Dist. Bd. of Edn.*, 59 Ohio St.3d 159, 160, 572 N.E.2d 80 (1991). The Ninth District Court of Appeals also explained that the decision to prosecute rests entirely within the prosecutor’s discretion. *Pengov v. White*, 146 Ohio App.3d 402, 2001-Ohio-1668, 766 N.E.2d 228 (2001) (stating “[t]he duty of the prosecuting attorney is to exercise his discretion in determining, on a case-by-case basis, whether to prosecute particular individuals for alleged criminal offenses). The United States Supreme Court has similarly held, with respect to federal prosecutors, “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute \* \* \* generally rests entirely in his discretion.” *United States v. Armstrong*, 517 U.S. 456, 464 (1996), quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

Based upon these principles encapsulated by the separation of powers doctrine, this Court has long recognized that “it is a general rule that a court of equity will not interfere by injunction to prevent the enforcement of criminal statutes at the instance of an alleged law violator.” *Troy Amusement Co. v. Attenweiler* (1940), 137 Ohio St. 460, 465, 30 N.E.2d 799, citing 1 *High on Injunctions*, 4th ed. 85, section 68. While there is an exception to the general rule, it is only where “public authorities seek to enforce unconstitutional and invalid legislation whereby vested property rights will be interfered with to the extent of causing irreparable injury for which there is no adequate remedy at law.” *Id.* at 466. However, like the plaintiffs in *Troy Amusement Co.*, plaintiffs in the underlying state court actions pending before Respondent have not alleged or sought a declaration that Ohio’s anti-gambling statutes are unconstitutional or otherwise void.

*See id.* at 465.

Courts of equity are not permitted to enjoin criminal proceedings because “[t]he legitimate place for the trial of criminal cases is in the courts established for that purpose and courts of equity will not oust the proper forum by drawing to themselves litigation which will prevent criminal courts from exercising their jurisdiction.” *Id.* at 465. In other words, “[e]ven an innocent person thus finds protection in the normal processes of the courts, without the intervention” of a civil court issuing equitable relief. *Id.* at 467. “This principle has found especial application in actions to enjoin prosecution for violation of penal laws prohibiting lotteries and schemes of chance.” *Id.* at 465, citing *Meadville Park Theatre Corp. v. Mook*, 337 Pa. 21, 10 A.2d 437 (Pa. 1940); *Harvie v. Heise, Sheriff*, 150 S.C. 277, 148 S.E. 66 (S.C. 1929); *Barkley Dist. Atty., v. Conklin*, 101 S.W. 2d 405, 1937 Tex. App. LEXIS 35 (Tex.1937); *Wellston Kennel Club v. Castlen, Pros. Atty.*, 331 Mo. 798, 55 S.W.2d 288 (Mo. 1932). If a party “has not violated the gambling laws, he may raise this defense to clear himself and to recover his property.” *Garano v. State*, 37 Ohio St.3d 171, 524 N.E.2d 496 (1988). Based on this precedent, this Court has made it clear that the appropriate course of action is to raise those defenses in the criminal action, when and if it is filed, not file a separate civil action seeking relief in equity.

In contravention of these principles, the plaintiffs of the underlying action ran to civil court seeking an advisory opinion in order to perform an end-run around a potential criminal indictment that may or may not come to fruition at some point in the future. The actions of the plaintiffs in the underlying state court cases raises unique issues because they seek to tie the hands of the Cuyahoga County Prosecutor thereby preventing him from exercising his prosecutorial powers. Rather than wait to see if the prosecutor did in fact file a criminal action

and then raising their defenses at that time, the appropriate course of action as recognized by this Court in *Troy Amusement, Co. and Garano v. State*, the plaintiffs in the action before Respondent chose to seek equitable relief from a civil court instead.

Respondent, by granting plaintiffs' requests for a temporary restraining order, has substantively involved herself in this attempt to thwart the Cuyahoga County Prosecutor's prosecutorial discretion, thereby treading into territory occupied exclusively by the executive branch of our government. A judge for the court of common pleas, as part of the judicial branch of the tri-partite government of the State of Ohio, does not have jurisdiction to enjoin and effectively eliminate a discretionary function of the executive branch. By granting injunctive relief that prematurely determines whether crimes were committed, Respondent exceeds her equitable power, interfering with Relator's prosecutorial discretion by precluding Relator's ability to prosecute criminal violations of Ohio gambling law against the named plaintiffs and/or others. Respondent's conduct, therefore, is an intrusion by a judicial officer that interferes with Relator's executive prosecutorial discretion to enforce Ohio law, which is not authorized by law. For these reasons, Relator meets the second prong for a Writ of Prohibition to issue.

**3. A Writ of Prohibition should issue because Relator satisfies the requirement of the absence of an adequate remedy at law.**

**a. Relator's adequate remedy at law is immaterial.**

"In cases of a patent and unambiguous lack of jurisdiction, the requirement of a lack of an adequate remedy at law need not be proven because the availability of alternate remedies like appeal would be immaterial." *State ex rel. City of Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-50369, 937 N.E.2d 88, ¶25, citing *State ex rel. State v. Lewis*, 99 Ohio St.3d, 2003-Ohio-2476, 789 N.E.2d 195, ¶18. It is unambiguous that Respondent, by enjoining the executive branch from enforcing criminal statutes, exceeded the jurisdiction conferred upon her by Section

4, Article IV of the Ohio Constitution. Therefore, whether Relator is entitled to an adequate remedy at law is immaterial such that a writ of prohibition should issue.

**b. Relator does not have an adequate remedy at law because he has no ability to appeal Respondent's Order granting a temporary restraining order.**

Alternatively, to the extent this Court does not find that the Respondent was patently and unambiguously without jurisdiction, Relator is without an adequate remedy at law. Generally, "absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal."<sup>3</sup> *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, ¶10 (internal citations omitted). In this case, however, Relator seeks a writ of prohibition to correct the Respondent's issuance of a temporary restraining order.

It is well established that "[a]n order of the court of common pleas granting a temporary injunction in a suit in which the ultimate relief sought is an injunction, is not either a judgment or a final order which may be reviewed by the circuit court on petition in error." *State ex rel. Tollis v. Court of Appeals for Cuyahoga County*, 40 Ohio St.3d 145, 148, 532 N.E.2d 727 (1988), citing *May, Co. v. Bailey, Co.*, 81 Ohio St. 471, 91 N.E. 183, syllabus; *McGuire v. Zarle*, 9th Dist. No. 26058, 2012-Ohio-2976, 2012 Ohio App. LEXIS 2605, ¶7; *Deyerle v. City of Perrysburg*, 6th Dist. No. WD-03-063, 2004 Ohio 4273, 2004 Ohio App. LEXIS 3882; *Mike Lapin, Inc. v. Cleveland Business Show, Inc.*, 8th Dist. No. 50028, 1986 Ohio App. LEXIS, 6131,

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<sup>3</sup> It is likely that Respondent would cite to *State ex rel. Mason v. Burnside* to rebut this concept. In that case, the county prosecutor sought a writ of prohibition against a judge that granted a discovery order. *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224. The prosecutor argued that he did not have an adequate remedy at law because discovery orders are interlocutory, and therefore, not final or appealable. *Id.* at ¶13. The Court was not persuaded by the prosecutor's argument and held that the writ of prohibition should not issue because there was an adequate remedy at law – an exception to the general rule of discovery orders, which allowed the state to appeal such orders "by leave of the court to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case." *Id.* (internal citations omitted). Not only was this a criminal case, as opposed to the civil end-around case that is the subject of this action, unlike the present action, *State ex rel. Mason* relied upon an exception that was created by statute under R.C. 2945.67.

at \*4 (Mar. 27, 1986). In fact, this Court even took notice that the United States Supreme Court held “[a] temporary injunction which merely serves to preserve the status quo pending the hearing on a request for a permanent injunction is not a final order appealable under §§ 2505.02, 2505.03.” *State ex rel. Tollis*, 40 Ohio St.3d at 148, quoting *Amalgamated Clothing Workers v. Richmond Bros., Co.*, 348, U.S. 511, 517-518. at fn. 3 (1955).

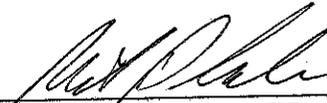
While there is a limited exception whereby the granting of a temporary restraining order is considered a final appealable order, this only exists where “the trial court enters a temporary restraining order that exceeds the preservation of the status quo.” *Farmers Ins. Exchange v. Weemhoff*, 5th Dist. No. 02-CV-26, 2002-Ohio-5570, 2002 Ohio App. LEXIS 5582, ¶4; *see also In re Estate of Georskey*, 11th Dist. No.2000-G-2299, 2001 Ohio App. LEXIS, at \*4 (Jul. 20, 2001). This situation does not exist in this case, however, because Respondent issued multiple temporary restraining orders, which on their face, proclaim “to return the parties to their respective positions (status quo).” (TRO, attached to Relator’s Complaint as Exhibit 5). Moreover, both complaints seek permanent injunctive relief. (J&C Marketing Complaint, at Prayer for Relief; AMA Ventures Complaint, at Prayer for Relief). Thus, Relator does not have the ability to appeal the Respondent’s decision granting a temporary restraining order. Therefore, Relator does not have an adequate remedy at law by way of appeal in this specific action.

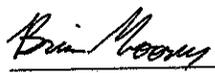
#### **IV. CONCLUSION**

Amicus Curiae, Ohio Attorney General Mike DeWine, respectfully submits that this Court should grant Relator’s Request for an Immediate Alternative Writ staying the proceedings in Cuyahoga County Common Pleas Case Nos. 12-CV-784234 and 12-CV-785188, which are currently pending before Respondent Judge Russo.

Respectfully Submitted,

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*Counsel for Amicus Curiae  
Ohio Attorney General Mike DeWine*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Amicus Curiae's Memorandum in Support of Relator's Petition for Immediate Alternative Writ* was served by US Mail, postage prepaid, on this 6<sup>th</sup> day of July, 2012, upon the following:

William D. Mason  
Cuyahoga County Prosecuting Attorney  
The Justice Center, Courts Tower  
1200 Ontario St., Ninth Floor  
Cleveland, Ohio 44113  
*Relator*

The Honorable Nancy Margaret Russo, Judge,  
Cuyahoga County Court of Common Pleas  
The Justice Center, Courts Tower  
1200 Ontario St., Courtroom 18C  
Cleveland, Ohio 44113  
*Respondent*

  
\_\_\_\_\_  
MICHAEL J. SCHULER (0082390)  
Assistant Attorney General



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion for Leave to File Amicus Curiae Memorandum in Support of Relator's Petition for Immediate Alternative Writ* and accompanying attachments were served by US Mail, postage prepaid, on this 6<sup>th</sup> day of July, 2012, upon the following:

William D. Mason  
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