IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Chester Township and the Chester Township Trustees Michael J. Petruziello, Bud Kinney, and Ken Radtke, Jr. 12701 Chillicothe Road Chesterland, OH 44026 Relators, vs. Honorable Timothy J. Grendell, Judge Geauga County Court of Common Pleas, Probate Division 231 Main Street, Suite 200 Chardon, OH 44024 Respondent.	)))))))))))))))))))	CASE NO.: 2015-0604 **MOTION FOR EMERGENCY STAY AND EXPEDITED ALTERNATIVE WRIT**

MOTION FOR EMERGENCY STAY AND EXPEDITED ALTERNATIVE WRIT

Relators Chester Township and the Chester Township Trustees (Michael J. Petruziello, Bud Kinney, and Ken Radtke, Jr.) ask this Court to immediately stay Respondent Timothy Grendell's orders **only** as to Relators in Geauga County Probate Court Case No.: 84PC000139. (See Exs. "A" and "B", attached to this Motion). Respondent has issued orders that imposed duties, responsibilities, and fees on Relators that have no jurisdictional basis. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶6, 7, 13; Ex. "A.") Most imminently, Respondent also has improperly ordered all the Relators to attend a "Status Conference ... [on] all pending matters" before the Respondent on April 28, 2015 at 2 p.m. without jurisdiction or authority to do so. (Notice of Hearing, March 31, 2015; Ex. "B.") Relators also ask this Court for an expedited alternative writ to issue. Respondent cannot exercise any such authority over Relators because he is without jurisdiction in that case. Allowing Respondent to exercise

authority over Relators would pose an unjustified hardship. Therefore, an immediate stay and expedited writ should issue. This Motion is more fully supported by the attached Memorandum.

MEMORANDUM IN SUPPORT

1. Introduction

This is an action for a writ of prohibition to preclude Respondent Probate Court Judge Timothy Grendell from exercising authority without jurisdiction over Relators Chester Township and the Chester Township Trustees (Michael J. Petruziello, Bud Kinney, and Ken Radtke, Jr.) in Geauga County Probate Court Case No.: 84PC000139.

This original action arises from a Revised Code Chapter 1545 proceeding that created the Chester Township Park District more than 30 years ago. This Chapter gives statutory authority of a Probate Court over the Park District, a separate governmental entity from Relators. A probate court is a court of limited and special jurisdiction that only has the powers granted to it by statute. The Probate Court 30 years ago created the Park District under Revised Code Chapter 1545. Chapter 1545 or any other law does not give the Probate Court authority or jurisdiction over Relators.

Relators have filed a writ of prohibition on April 15, 2015 with this Court. This stay and expedited alternative writ should be granted while this Court adjudicates the Relators' writ of prohibition. As more fully set forth in Relators' writ of prohibition, Respondent is exceeding his lawful jurisdiction and exercising authority that he does not have by enforcing and issuing void judgments as to the Relators. This request is made in good faith and not for delay. A expedited writ and/or an immediate stay of the Respondent's orders regarding Relators is justified and warranted.

2. Background

Relators Michael J. Petruziello, Bud Kinney, and Ken Radtke Jr. are the acting trustees of Chester Township, Geauga County, Ohio. Relator Chester Township is an Ohio political subdivision located in Geauga County. Chester Township is a separate and distinct political subdivision from the Chester Township Park District. Respondent Judge Timothy Grendell is the Geauga County Probate/Juvenile Court Judge.

More than 30 years ago, then Geauga County Probate Court Judge Frank Lavrich created the Chester Township Park District under Chapter 1545. On April 2, 1984, the predecessors to the current Chester Township Trustees under R.C. Chapter 1545 applied to Judge Lavrich to create a park district.

On May 10, 1984, Probate Court Judge Lavrich granted that application and created the Chester Township Park District under R.C. 1545.02. In doing so, the Probate Court created a new "body politic and corporate with full authority and subject to such limitations as provided by law." The Park District is a separate legal entity distinct from the Chester Township/Chester Township Trustees. The Probate Court also appointed three Park District commissioners under R.C. 1545.05.

During the three decades after the Park District's creation, the Probate Court appointed, reappointed, or removed Park District trustees. Chapter 1545 does not give authority to a probate court to exercise authority over any entity other than the Park District itself. *See generally* Revised Code Chapter 1545.

"Parkside" is a five-acre community park located in Chester Township. In a Judgment Entry filed in the apparently still open case through which the Park District was created [1984 case (84PC000139)], Judge Grendell appointed a Master Commissioner (Mary Jane Trapp) to

review issues related to the operation of the Park District and Parkside. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Ex. "A.")

The Master Commissioner conducted an investigation and rendered a Report regarding the Park District.[1] In addition to accepting the Master Commissioner's report and issuing various directives as to the Park District, the Probate Court also improperly imposed duties and fees on the Relators (not merely the Park District), thus exceeding its jurisdiction and authority as to the Relators. (See Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6, 7, 13; Ex. "A.")

Although Chapter 1545 does not give the Probate Court ongoing authority over Chester Township, the Probate Court's Nov. 26, 2014 Entry ordered that the Township "has a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties" (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Ex. "A.") and ordered that the ongoing costs of the "Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under ORC 1545." (*Id.* at ¶ 13.) The order also required the Township to meet with the Master Commissioner and the Park District "to formulate a new" service agreement, despite an existing 20-year agreement (*Id.* at ¶ 7); and to establish a new budget for the Park District, even though the Township has already approved the Park District's requested budget for 2015 for $75,000. (*Id.* at ¶ 6.)

[1] The Report is available at the Probate Court's website (http://co.geauga.oh.us/Portals/3/resources/forms/FORMS-PROBATE/Master%20Commissioners.pdf.) (Last visited 4/15/2015).

Chapter 1545 was -- and is -- the exclusive authority the Probate Court possessed with regard to the Park District. The Respondent did not and does not have "inherent authority" in this regard over the Relators.

Respondent has also improperly issued an order compelling the Relators to attend a "Status Conference ... [on] all pending matters" before the Respondent on April 28, 2015 at 2 p.m. (Notice of Hearing, March 31, 2015; Ex. "B.")

LAW AND ANALYSIS

An alternative writ operates as a stay of the judicial or quasi-judicial act sought to be prohibited. *Green v. Kubicki*, 120 Ohio St.3d 1521, 2009-Ohio-698. "After the time for filing an answer to the complaint or motion to dismiss, the Supreme Court will either dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued." St.Ct.Prac.R. X(5). Although this Court "generally wait[s] for a response before rending this determination . . . under S.Ct.Prac.R. XIV(4), a party may request emergency relief." *State ex rel. Stern v. Mascio* (1998), 81 Ohio St.3d 297,298, 691 N.E.2d 253. It is then a matter of discretion whether a "case merits an expedited determination." *Id.*

Courts have the power to stay proceedings pending resolution of potentially dispositive developments. *Cf. State v. Hochhausler* (1996), 76 Ohio St.3d 455, 464; *Cf. State ex rel. Smith v. Friedman* (1970), 22 Ohio St.2d 25.

This Court should exercise its discretion to issue a stay and/or expedited alternative writ because of the stark absence of authority Respondent has to issue orders related to these Relators, and the unjust impact on these Relators.

In sum, Revised Code Chapter 1545 does not give the probate court ongoing authority or jurisdiction over the Relators. Even a cursory review of Chapter 1545 reveals no section that

suggests continuing authority of a probate court to impose on the Relators duties, meetings regarding funding requirements, or payment of a master commissioner to review the Park District's operations. See generally R.C. Chapter 1545.

Further, Judge Lavrich's order from the 1984 case creating the Park District does not create ongoing authority over the Appellant; it merely creates the Park District. See 1984 Journal Entry. Respondent has no authority over the Relators in this circumstance. No Ohio court has ever found that a probate court has authority over the Township that applied to create a park district under Chapter 1545. Respondent's "inherent authority" is not unlimited and provides no basis for exercising this type of power over the Relators, whose predecessors 30 years ago merely applied to have a park district created. Chapter 1545 does not authorize Respondent to exercise power over the Relators.

Relators have a right and duty to prevent the Township's resources from being expended, and a duty to protect the property (e.g., the finances and resources) of the Township. The Relators have been entrusted by the electorate to protect those resources. The November 2014 Judgment Entry (Ex. "A") is immediately inimical to the duty of the Appellant to protect its discretionary financial resources, its decision making, as well as the resources of the Board whose members are compelled to act under the Probate Court's order. Furthermore, and even more imminently, the Respondent has ordered all the Relators to attend a "Status Conference ... [on] all pending matters" before the Respondent on April 28, 2015 at 2 p.m. (Notice of Hearing, March 31, 2015; Ex. "B.")

Respondent is exceeding his lawful jurisdiction and exercising authority that he does not have by enforcing and issuing void judgments as to the Relators. A expedited writ is justified or an immediate stay of the Respondent's orders regarding Relators is warranted.

CONCLUSION

This Court should grant an emergency stay and/or an expedited alternative writ.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

/s/Frank H. Scialdone
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Counsel for Relators State of Ohio ex rel. Chester Township and the Chester Township Board of Trustees Michael J. Petruziello, Bud Kinney and Ken Radtke, Jr.

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Emergency Stay and Expedited Alternative Writ was served via email on April 15, 2015 to:

James Flaiz, Jr., Prosecuting Attorney
Geauga County Prosecutor's Office
231 Main Street, 3rd Floor
Chardon, OH 44024
Email: james.flaiz@gcpao.com

Counsel for Respondent

/s/ Frank H. Scialdone
FRANK H. SCIALDONE (0075179)
TODD M. RASKIN (0003625)

Counsel for Relators State of Ohio ex rel. Chester Township and the Chester Township Board of Trustees Michael J. Petruziello, Bud Kinney and Ken Radtke, Jr.

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DIVISION
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IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:	)	CASE NO. 84PC000139
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	JUDGE TIMOTHY J. GRENDELL
	)	
	)	**JUDGMENT ENTRY**
	)	**FINDINGS OF FACT**
	)	**CONCLUSIONS OF LAW**

In March, 2014, the Probate Court received a copy of the Chester Township Park District 2013 Review (revised 3/5/2014) (the "Review"). Because of the Review, the Township Trustees at their March 7, 2014 meeting withheld funding for the Park District.

The Review raised a number of issues regarding the operation of the Park District relating to vendor payments; increased spending; park projects, plans and budget estimates; alleged failures to follow Ohio law, Park District Bylaws and the agreement between the Park District and Chester Township relating to the operation of a Park District; open meeting concerns; irregularities in accounting; non-park related expenditures for goods and services; and the employment of the park secretary.

Pursuant to the Probate Court's statutory responsibilities under R.C. 1545.05 and 1545.06 with respect to the Chester Township Park Board, the Court appointed Mary Jane Trapp as Master Commissioner to investigate the matters raised by the Review.

The Master Commissioner conducted a thorough and comprehensive review and prepared a 252 page report, with recommendations (the "Report").

The Probate Court held a public hearing at the Chester Township Fire Station at which the Master Commissioner presented a summary of her Report and delivered the Report to the Court.

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The Probate Court invited comments from Chester Township residents and the Chester Township Trustees, with a comment deadline in October, 2014.

The Chester Township Trustees timely submitted their comments by letter dated October 8, 2014.

No other public comments were submitted in writing to the Court.

Based on the Court's consideration and review of the Master Commissioner's Report and supporting documents and the Township Trustees' letter, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Chester Township Park is vastly improved in recent years under the authority of a dedicated group of volunteer Commissioners, who have not had the benefit of a dedicated, independent financing mechanism.
2. The Chester Township Park District was formed by the Geauga County Probate Court (Judge Lavrich) in 1984 as a separate governmental entity.
3. The primary purpose for forming the Park District as a separate governmental entity was to keep politics out of the Township Park and to protect the Township Park District from the vicissitudes of township politics and government.
4. The Chester Township Park District operated until 2002 with separate identified inside millage funding, as part of its funding source.

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5. In 2002, the Township Trustees terminated the dedicated inside millage funding of the Township Park District. As a result, the Park District lost access to those dedicated funds and monies for the Park. District had to be appropriated by and obtained from the Township Trustees.
6. This loss of dedicated funds and the change in funding was and remains contrary to the original purpose for forming the Park District as a separate, distinct, and independent governmental entity, removed from the politics and control of the Township Trustees.
7. Historically, the Township Park District has operated with less formality than specified in the Park District's Bylaws and required by applicable state statutes. These formality issues include, but are not limited to, meeting minutes, financial accounting methods, and public meeting requirements.
8. For reasons apparently outside of the Park Commissioners' control, the State Auditor failed to conduct an audit of the Chester Township Park District for approximately 30 years.

Conclusions of Law

1. The Chester Township Park District is an independent body politic, duly formed by the Geauga County Probate Court to provide Chester Township residents with a public park and recreational amenities.
2. As a matter of Ohio law, the Township Park District is a separate government entity operated by a Board of Park Commissioners

appointed by the Probate Court pursuant to Ohio law, independent from the control of the Township Trustees. As so formed, dedicated annual funding of the Park District is necessary for the Park District to perform its independent statutory duties.

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3. The Township's elimination of dedicated millage funds for the Township Park District in 2002 directly contravened the fundamental purpose for creating the independent Park District, free from the vicissitudes of Township government and politics. The agreement between the Township Trustees and Township Park District, addressing construction or alteration of any permanent improvement on park lands, zoning compliance and police use, has a somewhat similar disparate impact.

4. (a) Contrary to the written comment of the Township Trustees, the funds necessary for the operation of the Township Park are separate and independent from the Township's funding needs. It is specifically for reasons such as possible Township financial management problems or financial pitfalls that the Chester Township Park District was formed separate and distinct from the control of the Township Trustees.

(b) Pursuant to O.R.C. Section 1545.20, the Park District Commissioners have the statutory authority to levy up to one-half mill for park funding purposes. Contrary to the comment/suggestion of the Township Trustees, such statutory levy authority does <u>not</u> necessarily

require "a ballot measure presented to the voters." Moreover, the proposition advanced by the Township Trustees that such a ballot measure "is the best method for stabilized funding" of the township park is contrary to O.R.C. Section 1545.20 and is not supported by the findings of the Master Commissioner.

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(c) The statutory responsibility for establishing dedicated funding for the Township park rests with the Park District Commissioners (see O.R.C. Section 1545.20), not the Township Trustees. For that statutory reason, there is no need for the Chester Township Trustees to meet with the Park Board to work on a ballot measure (as generously suggested by the Trustees), nor do the Chester Township Trustees have any legal authority to do so.

5. To perform its statutory duties, the Park District needs to address its financial needs and take appropriate action, as permitted by statute, to assure that dedicated independent funds are available annually, starting January, 2016.

6. Until the Park District is able to establish a dedicated independent funding source, the Township Trustees, who previously (2002) unilaterally terminated the Park District's prior millage funding, have a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties. The Master Commissioner shall conduct a meeting with the Chester Township Trustees and Park District Commissioners to facilitate the

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finalization and approval of a 2015 Budget and funding for the Chester Township Park District.

7. The current agreement between the Township and the Park District is possibly in conflict with the original Township application and judicial formation documents creating the Park District, which set the territorial limits of the Township Park District. Such agreement cannot circumvent or improperly limit the statutory authority of the Park District Commissioners or the independent nature of the Park District as a separate governmental entity. Such agreement cannot be employed to give the Township Trustees authority over the Park Commissioners' levy authority under O.R.C. Section 1545.20 or to dictate the policies and procedures employed by the Park District Commissioners in their management of the Township Park. The Master Commissioner is directed to meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with and not in conflict with the authority of the Park District under O.R.C. Chapter 1545 and the initial Township application and judicial documentation forming the Park District.

8. Except as otherwise provided in this Judgment Entry, the Court adopts the findings and recommendations of the Master Commissioner submitted to the Court on August 25, 2014, as if those findings and recommendations were fully rewritten herein.

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9. The Chester Park District Commissioners must comply with the statutory bonding requirement. O.R.C. Section 1545.05.

10. The Chester Park District Commissioners must submit all donations to the Probate Court for approval pursuant to O.R.C. Section 1545.11.

11. The Court orders and directs that the Chester Township Park District Commissioners (i) comply with all applicable Ohio laws and (ii) take the actions necessary to comply with the recommendations of the Master Commissioner to the extent required to maintain compliance with applicable Ohio law.

12. The Court urges the Chester Township Park District to consider the retention of legal counsel to advise and assist the Park District, as necessary from time to time, to maintain compliance with applicable Ohio law.

13. The cost of the Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under O.R.C. Chapter 1545.

Under Ohio law, the Chester Township Park District, as formed by the Township, is a separate government body, independent from the control of the Chester Township Trustees. The Chester Township Park District must maintain such independence and governmental autonomy. Funding for the Township Park and all contractual interaction with the Township Trustees also must respect and maintain the independence and governmental autonomy of the Chester Township Park District. The Park District and its Board must comply with all applicable Ohio laws.

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You are hereby notified that on this date a Judgment Entry was filed that may be an "appealable" order.

IT IS SO ORDERED.

Timothy J. Grendell

TIMOTHY J. GRENDELL, Judge

cc: Chester Township Trustees
Chester Park Board Commissioners
Master Commissioner Mary Jane Trapp
Prosecutor

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

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IN COMMON PLEAS COURT
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PROBATE-JUVENILE DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF	)	CASE NO. 84 PC 139
	)	
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	JUDGE TIMOTHY J. GRENDELL
	)	
	)	
	)	**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that a Status Conference has been set on all pending matters.

SAID CONFERENCE WILL BE SET BEFORE THIS COURT AT GEAUGA COUNTY PROBATE COURT, HOUSE ANNEX 2ND FLOOR, 231 MAIN ST., CHARDON, OHIO 44024 ON THE **28th day of April at 2:00 pm.**

PLEASE APPEAR AT THIS TIME

Given under my hand and seal of said Court **March 31, 2015.**

TIMOTHY J. GRENDELL, JUDGE

Karla Murray, Chief Deputy Clerk

Cc: Chester Twp. Park Board
Chester Twp. Trustees
Mary Jane Trapp, Master Commissioner
Chester Twp. Clerk
James Gillette
Prosecutor
Frank Scailone

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