

In the  
**Supreme Court of Ohio**

MARCUS PRYOR II,	:	Case No. _____
	:	
Appellee,	:	On Appeal from the
	:	Summit County
v.	:	Court of Appeals,
	:	Ninth Appellate District
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES,	:	Court of Appeals
	:	Case No. 27225
Appellant.	:	

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**MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT DIRECTOR, OHIO DEPARTMENT  
OF JOB AND FAMILY SERVICES**

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## INTRODUCTION

This case raises an important and recurring procedural question, which divides the appellate courts—namely, the requirements for parties seeking to invoke the subject-matter jurisdiction of a common pleas court to review a final order of the Unemployment Compensation Review Commission (“Commission”). The statute governing appeals, R.C. 4141.282, says in part (C) that “the timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court,” and that the notice “shall identify the decision appealed from.” R.C. 4141.282(C). Part (D) further defines what constitutes a proper notice: “The appellant shall name all interested parties as appellees in the notice of appeal.” R.C. 4141.282(D). The provision also defines interested parties to include those listed in the administrative decision (typically, an employee and employer) and the Director of the Department of Job and Family Services. *Id.*

This case asks whether a notice of appeal that fails to follow the statute—one that fails to name an interested party—suffers a *jurisdictional* defect, such that the common pleas court never acquires jurisdiction. Appellant, the Director of the Ohio Department of Job and Family Services, urges the Court ultimately to hold that such a defect is jurisdictional. For now, though, the Director urges the Court simply to review this case, so that lower courts and parties have one consistent answer to this important question. Review is needed here for several reasons.

*First*, the conflict is reason enough to review the case, to ensure equal treatment of all parties. The appeals court in this case has certified a conflict. (The notice of conflict has been filed in this Court as Case No. 2015-0767.) The decision below is the outlier, as the Ninth District is the only appeals court to hold that a notice of appeal that fails to name all “interested parties” nevertheless perfects a common pleas court’s jurisdiction. *See Pryor v. Director, Ohio Dept. of Job & Family Servs.*, 2015-Ohio-1255 ¶ 11 (9th Dist.) (“App. Op.” Ex. 1). Thus, the

court reinstated Pryor's appeal, which the trial court dismissed for his failure to name his former employer. In sharp conflict, *six* other appeals courts have all held that failure to name an interested party is a jurisdictional defect. *See* below at 4 (listing all cases). And the conflict is recent and growing: All of the conflict cases are from the last six years; three are in the same *month*, and one was decided the day after this one. *Id.* The conflict thus needs resolution now.

Whatever the right answer, parties should be treated the same in all districts. The split means that those in the Ninth District, such as Pryor, are receiving an undeserved advantage, or that *many* parties in other districts are being wrongly deprived of their day in court.

*Second*, review is needed because the courts' subject-matter jurisdiction is important as a matter of principle and of practical consequences. On principle, jurisdictional rules are especially important, as they go to the fundamental power of courts to hear cases. And the practical impact is strong. "The issue of subject matter jurisdiction cannot be waived and therefore can be raised at any time during the proceedings." *In re Byard*, 74 Ohio St. 3d 294, 296 (1996). Thus, unclear rules of subject-matter jurisdiction have serious repercussions. If a trial court guesses wrongly on whether it has jurisdiction, the appellate court must wipe out the results of everything that follows, no matter how time-consuming and expensive that litigation.

Given these consequences, the parties, as well as the courts, need guidance. Those parties include applicants for unemployment compensation benefits, employers, and the Director.

For the reasons above and those detailed below, the Court should review this case. The Director urges the Court ultimately to hold that the statutory mandate is a jurisdictional requirement. The trial court was right to dismiss, and the appeals court was wrong to reverse. More important, at this stage, is that Ohio needs an answer.

## STATEMENT OF THE CASE AND FACTS

**A. Pryor did not name his former employer as an appellee in his notice of appeal, so the trial court dismissed for lack of jurisdiction.**

Marcus Pryor II applied for unemployment compensation benefits, and his claim was denied. The Commission's final administrative decision disallowed review of that denial. App. Op. ¶ 2. Pryor sought to appeal the Commission's order, as R.C. 4141.282 authorizes, to the Summit County Court of Common Pleas. *Id.* ¶¶ 2, 6.

Pryor's notice of appeal was timely, but it failed to name his former employer—the United States Department of the Army—as an appellee. *Id.* ¶ 6. The trial court granted the Director's motion to dismiss, agreeing that the court lacked subject-matter jurisdiction because Pryor failed to name his former employer as an appellee in the notice of appeal. *Id.* ¶ 3; Judgment Entry, Summit Cty. Court of Common Pleas, Dec. 31, 2013 (Ex. 2).

**B. The Ninth District reversed, holding that a failure to name an interested party was a non-jurisdictional defect.**

On appeal, the Ninth District Court of Appeals reversed the trial court's dismissal of Pryor's appeal. App. Op. ¶ 1. The appeals court noted that no one disputed that Pryor failed to name his former employer as an appellee in his notice of appeal. *Id.* ¶ 6. The court also noted that 4141.282(D) mandates that the notice of appeal include all interested parties, and that the former employer is an interested party. *Id.* Thus, it agreed with the trial court and the Director that Pryor's notice suffered a defect of some sort. The question was whether the defect was a jurisdictional one, or whether the only jurisdictional requirement was R.C. 4141.282(C)'s requirement of a timely notice identifying the decision appealed. *See id.* ¶ 7.

The appeals court concluded that jurisdiction was perfected by a timely notice identifying the decision appealed, and it held that naming the proper appellees in the notice of appeal was not a jurisdictional requirement. *Id.* ¶ 11. It reasoned that R.C. 4141.282(C) provides that

“[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.”

*Id.* It acknowledged that the notice was flawed, but that both the flaw and its remedy were governed by the civil rules, not the statute:

An appellee may still seek dismissal pursuant to Civ. R. 12(B)(7) (failure to join a party under Civ. R. 19 or 19.1) or pursuant to Civ. R. 12(B)(5) (insufficiency of service of process). Alternatively, once an appeal has been perfected, the appellant may seek leave to amend the notice of appeal to cure any nonjurisdictional defects.

*Id.* ¶ 11.

The Ninth District acknowledged that its view conflicted with several appeals courts, citing decisions from the First, Second, and Eighth Districts. *Id.* ¶¶ 8-9 (citing *Dikong v. Ohio Supports, Inc.*, 2013-Ohio-33 (1st Dist.); *Mattice v. Ohio Dept. of Job & Family Servs.*, 2013-Ohio-3941 (2d Dist.); and *Luton v. Ohio Unemp. Review Comm.*, 2012-Ohio-3963 (8th Dist.)). The court explained that those other courts “concluded that an appellant’s failure to name one of the interested parties to an appeal from the Unemployment Compensation Review Commission’s decision divests the common pleas court of jurisdiction to hear the appeal,” and confirmed that those “appellate courts read the mandate in R.C. 4141.282(D) to name all interested parties in the notice of appeal as jurisdictional.” *Id.* ¶ 8.

### **C. The Ninth District certified a conflict.**

On the Director’s motion, the Ninth District certified a conflict. The Court cited the three decisions above, and three others that the Director noted. *See Hinton v. Ohio Unemp. Review Comm.*, 2015-Ohio-1364 (7th Dist.); *Rupert v. Ohio Dept. of Job & Family Servs.*, 2015-Ohio-915 (6th Dist.); *Sydenstricker v. Donato’s Pizzeria, LLC*, 2010-Ohio-2953 (11th Dist.). *Hinton* was issued the day before *Pryor*, and *Rupert* was decided two weeks before. The court certified this question:

When appealing an unemployment compensation decision to the trial court, are the requirements contained in R.C. 4141.282(D), which explains how to name the parties, mandatory requirements necessary to perfect the appeal and vest the trial court with jurisdiction?

*See* Order Certifying Conflict (attached to Notice of Certified Conflict filed in Supreme Court Case No. 2015-0767).

**THIS CASE IS OF GREAT PUBLIC AND GENERAL INTEREST**

Review is needed because the Ninth District’s decision raises an important and recurring issue, and only this Court can resolve the conflict below. First, the Court should review the sharp conflict here—between the decision below and the First, Second, Sixth, Seventh, Eighth, and Eleventh Districts—to provide uniformity and ensure that parties are treated the same throughout Ohio. Second, this conflict involves the courts’ subject-matter jurisdiction, and such jurisdictional issues especially need review, to ensure that courts do not hear cases they should not—wasting resources as well as violating an important principle—and to ensure that no one is improperly denied their day in court. And the parties, including applicants, employers, and the Director, all need guidance.

**A. The Court should resolve the growing conflict and ensure equal treatment for all parties in similar situations.**

The conflict here is reason enough for review. No one disputes that the Ninth District’s decision conflicts with decisions from the First, Second, Sixth, Seventh, Eighth, and Eleventh Districts interpreting the same statute. Indeed, Pryor responded to the Director’s motion by agreeing that a conflict exists. Given that agreement and the appeals court’s certification, the Director only briefly confirms that a conflict exists, and adds why the Court should grant review in this complementary discretionary appeal.

First, the conflict is an undoubted legal conflict, as the appeals courts disagree on the statute’s meaning, and nothing turned on the facts in any of the cases. *See* App. Op. ¶ 8

(acknowledging disagreement on the statute’s meaning). In all of the decisions, the court found as a bright-line rule that the failure to name an appellee was not a jurisdictional flaw, as in Ninth District’s decision below, or found that it *was* such a flaw, as in the other six cases. In three of the cases, a party failed to name a former employer as an appellee. *See Luton*, 2012-Ohio-3963 ¶ 3; *Mattice*, 2013-Ohio-3941 ¶ 4; *Rupert*, 2015-Ohio-915 ¶ 3. In two, a party failed to name the Director. *See Dikong*, 2013-Ohio-33 ¶ 3; *Sydenstricker*, 2010-Ohio-2953 ¶ 4. In *Hinton*, the party failed to name both the Director and his former employer. 2015-Ohio-1364 ¶ 14. In all six cases, the courts left no doubt that their decisions would cover all scenarios, regardless of which interested party was omitted.

The courts disagreeing with the Ninth varied slightly in their analyses, but all reached the same legal conclusion. For example, in *Dikong* the First District focused on the statutory text, describing *Luton* and *Sydenstricker* as relying more upon precedent from this Court, which had applied an earlier, different version of the statute. *Dikong*, 2013-Ohio-33 ¶ 15. The First District reasoned that *not* enforcing the appellee-naming mandate as a jurisdictional requirement “would render R.C. 4141.282(D) meaningless.” *Id.* ¶ 21. It added that if the requirement were not jurisdictional, “[t]aken to its logical extreme, a party could write ‘Notice of Appeal’ at the top of a blank page, file it, and the common pleas court would have subject-matter jurisdiction over the appeal.” *Id.* The Ninth District cited this reasoning, disagreeing with it. App. Op. ¶ 4. Whatever the reasoning, though, the conflict in outcome is sharp and undeniable.

Second, the conflict should be resolved to ensure equal treatment of parties in similar situations. That equality should be provided sooner rather than later, regardless of the outcome. If the Director is right (and she is, as shown below), Pryor and any future, similar litigants in the Ninth District will receive a benefit they do not deserve, in having their cases heard despite a

jurisdictional flaw, while others in most districts have their cases dismissed. Conversely, if the Ninth District is right, *most* parties who make the same mistake are being wrongly denied their day in court. That unfairness extends to the parties on the other side of each case. For example, if Pryor is allowed to proceed while others would not be able to, his benefit results in harm to his former employer. An employer who goes unnamed might miss its chance to participate on the *merits* of the appeal, even though its former employee might have cases reinstated, and benefits perhaps ordered. That costs an employer money, as some employers repay the fund dollar-for-dollar, R.C. 4141.242(A), while others have their unemployment premiums raised based upon successful claims, R.C. 4141.25(A).

This inequality should be resolved now. If it is not, the problem will surely grow as the remaining districts address the issue, which seems likely given the frequency and recency of the decisions. As noted above, these seven decisions have all arisen in the last six years, with three decisions within one month (*Hinton*, *Pryor*, and *Rupert*). Indeed, the Director has also sought a conflict certification in *Hinton*, despite winning that case, because she believes that the party there deserves the same treatment as Pryor here, however this case comes out.

Finally, given this need to resolve the conflict and ensure equal treatment, the Court should grant this discretionary appeal to complement the conflict certification. If both are granted and consolidated, the discretionary case admittedly adds nothing, but it also causes no harm. And its presence ensures that the Court may resolve the issue even if the conflict goes away, as occasionally happens, such as if an appellate district changes its view. Here, if the Ninth District somehow changes course while this case is pending, review would be worthwhile to resolve the issue before it flares up again, which could happen if another district takes the view that the decision below did. Thus, the Court should grant discretionary review.

**B. The Court should grant review because conflicts over subject-matter jurisdiction raise special concerns requiring review, and the parties need guidance.**

As explained above, the conflict is reason enough to review the case, and additional reasons cement the need for review. While a conflict on any legal issue is cause for concern, conflicts over subject-matter jurisdiction raise special concerns requiring review.

Subject-matter jurisdiction is different from other procedural or substantive issues, because it involves the courts' fundamental power to hear a case to begin with. "The issue of subject matter jurisdiction cannot be waived and therefore can be raised at any time during the proceedings." *In re Byard*, 74 Ohio St. 3d 294, 296 (1996). Indeed, questions of subject-matter jurisdiction can be "properly raised by this court sua sponte." *State v. Noling*, 136 Ohio St. 3d 163, 2013-Ohio-1764 ¶ 14 (2013). Likewise, traditional equitable exceptions for missed deadlines do not apply to time limits that narrow the courts' subject-matter jurisdiction. *See Skye Metals Recovery, Inc. v. Nally, Dir., Ohio Env'tl. Protection Agency*, 2013-Ohio-1522 ¶¶ 7-8 (10th Dist.); *cf. Bowles v. Russell*, 551 U.S. 205, 214 (2007). All those corollary rules reflect one common principle: It is important to enforce jurisdictional limits.

Moreover, enforcing jurisdictional limits is especially important in the area of administrative appeals, which are created by statute and thus can proceed only when a party satisfies the jurisdictional requirements that the General Assembly establishes. *Zier v. Bureau of Unemp. Comp.*, 151 Ohio St. 123 (1949), syl. ¶ 1 ("An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements."); *Proctor v. Giles* (1980), 61 Ohio St. 2d 211 (same); *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St. 3d 24, 27 (1990) ("When a right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute.").

A decision from this Court also raises the profile of such a procedural rule, and the General Assembly is then more likely to review the statute, retaining it deliberately or amending it if it wishes a different rule from what the statute provided. For example, after the Court upheld certain jurisdictional requirements in R.C. 119.12—one requiring a party to state the “grounds” for its appeal in its notice, and another requiring proper filing of an original with an agency and a copy with the common pleas court—the Assembly amended R.C. 119.12 to eliminate those requirements. Compare R.C. 119.12 with *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, 121 Ohio St. 3d 622, 2009-Ohio-2058 ¶¶ 20-21 (strictly applying grounds requirement under former provision), and *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St. 3d 47, 2007-Ohio-2877 ¶¶ 17-18 (strictly applying original-and-copy requirement under former provision).

Jurisdictional limits are not only a matter of principle, but are important for practical reasons as well—so any continued uncertainty carries high costs. Significant “[j]udicial resources . . . are at stake” when interpreting jurisdictional prerequisites. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2009). Jurisdictional uncertainty risks a waste of such resources. If a court mistakenly proceeds and is later reversed, everything done in the case is thrown out. See *Patton v. Diemer*, 35 Ohio St. 3d 68, syl. ¶ 3 (1988) (“A judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*.”); *Jenkins v. Keller*, 6 Ohio St. 2d 122, 126 (1966) (“[I]t is well settled that, where a court has no jurisdiction over the subject matter of an action, a challenge to jurisdiction on such ground may effectively be made for the first time on appeal in a reviewing court.”); cf. *Hampton v. R.J. Corman R.R. Switching Co.*, 683 F.3d 708, 714 (6th Cir. 2012) (dismissing for lack of subject-matter jurisdiction “despite the time, effort, and money that unfortunately have been wasted on litigating this matter”); *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 693 (7th Cir. 2003) (same).

Accordingly, the courts (and ultimately the taxpayers that pay for them) “benefit from straightforward rules under which they can readily assure themselves of their power to hear a case.” *Hertz*, 559 U.S. at 94. Since courts must strictly enforce the rules of subject-matter jurisdiction, “administrative simplicity is a major virtue in” those rules. *Id.* Such simplicity requires clarity as to all parts of the rules for appealing.

Moreover, just as lower courts need guidance on this issue, so, too, do the many parties that appear before the Commission. Those parties need to know what they must do to perfect their appeals, and the Court should grant review because their cases and resources are at stake, too. And if the parties are given clear rules to follow—including a warning of the consequences if they do not follow the rules—they can then follow those rules, and eliminate the need for courts to even face and resolve such disputes.

Thus, the Court should review the case to provide to clarity to a critical jurisdictional issue.

## ARGUMENT

### **Appellant Director, Ohio Department of Job and Family Services’ Proposition of Law:**

*In an unemployment compensation administrative appeal, R.C. 4141.282(D)’s mandate that the “appellant shall name all interested parties as appellees in the notice of appeal” is a jurisdictional requirement, so a defective notice of appeal fails to vest jurisdiction in a common pleas court.*

The governing statute here, R.C. 4141.282, requires in plain language that a party seeking to appeal an order of the Commission must file a notice of appeal within 30 days of the Commission’s order, R.C. 4141.282(C), and that notice must name all interested parties as appellees, R.C. 4141.282(D). The fact that the party-naming requirement is in a “separate” division, part (D), does not mean that it is not jurisdictional, as part (D) simply builds on part (C)’s requirement by defining *what* a proper notice of appeal includes. If a party’s notice does

not satisfy (D), the party did not truly file a notice of appeal to satisfy (C). The Ninth District's contrary conclusion was wrong.

**A. R.C. 4141.282's plain text requires a party appealing a Commission order to timely file a notice of appeal, and that notice must name all interested parties as appellees to be a proper notice and thus to vest jurisdiction in the trial court.**

The plain text of the statute here, R.C. 4141.282, shows that the six districts disagreeing with the Ninth District had it right: A party appealing a Commission order must file a timely notice to satisfy R.C. 4141.282(C), and the party must name all interested parties as appellees in the notice of appeal to meet R.C. 4141.282(D). Part (D)'s naming requirement defines what a proper notice of appeal *is*, by its contents, so that requirement is just as much a jurisdictional requirement as Part (C), and a failure to meet it deprives a common pleas court of jurisdiction.

Start with the plain language. *See In re M.W.*, 133 Ohio St. 3d 309, 2012-Ohio-4538 ¶ 17 (“When analyzing a statute, [this Court] first examine[s] its plain language and appl[ies] the statute as written when the meaning is clear and unambiguous.”); *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St. 3d 549, 553 (2000) (“When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation”). R.C. 4141.282(A) sets the thirty-day deadline to appeal, and R.C. 4141.282(C) requires timely filing and also sets the first content requirement for the notice, namely, identifying the decision appealed: “The timely filing of a notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.”

R.C. 4141.282(D) builds on part (C) by adding another content requirement: It says that an appellant “*shall name all interested parties as appellees in the notice of appeal.*” (emphasis added). To leave no doubt, it adds that the “director . . . is always an interested party and *shall be named as an appellee in the notice of appeal.*” *Id.* (emphasis added). Notably, the sentences

in part (D), requiring the naming, have the same structure as the sentence in part (C) requiring the identification of the appealed decision. Nothing distinguishes them other than labeling the statute's provisions piece-by-piece, but surely that does not change things.

This Court's decision in *Spencer v. Freight Handlers, Inc.*, 131 Ohio St. 3d 316, 2012-Ohio-880, shows why the naming requirement here is jurisdictional. In *Spencer*, the Court reviewed a similar provision governing workers' compensation appeals, which required certain items to be named in the notice of appeal. The Court explained that the statute's first paragraph established those items that must be included in the notice of appeal itself, and it said that those items therefore *were jurisdictional requirements*. *Id.* ¶ 20. However, a requirement that the administrator be made a party was not one of the items specified to be included within the notice itself, and that contrast made all the difference:

R.C. 4123.512(B) requires that certain facts be pled in the notice of appeal. "The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom." This sentence does not say "names of the claimant and the employer and the administrator." The General Assembly could have easily added the administrator as a party to be named in the notice of appeal, but it did not do so.

*Id.* The Court explained that the statute's second paragraph did say that the administrator shall be made a party and shall be served, but reasoned that the "second paragraph . . . is not a continuation of the first paragraph, dictating additional items that must be included in a notice of appeal. Instead, the second paragraph lists a number of things that are required in addition to or *subsequent to* a notice of appeal." *Id.* ¶ 17 (emphasis added).

In other words, *Spencer's* rule is that those items specified to be *included in the notice of appeal* are jurisdictional requirements, while requirements outside the notice—"in addition to or subsequent to a notice"—are not jurisdictional. *Spencer* even explained that if the Assembly had included "names of the claimant and the employer and the administrator" as part of the required-

contents-of-notice sentence, as it did for the decision appealed from, claim number, etc., then the requirement would have been jurisdictional. *Id.* ¶ 21. *Spencer* further contrasted those statutes in which party-naming was required in a notice of appeal, and thus was a jurisdictional requirement: “We have recognized that naming proper parties and fulfilling service requirements are jurisdictional requirements in cases that involve statutes that clearly require such for jurisdiction.” *Id.* ¶ 19.

*Spencer*’s reasoning renders the party-naming requirement at issue here a jurisdictional one. Here, the party-naming requirement is stated as something that must be included in a notice of appeal; it is not a nonjurisdictional “outside the notice” requirement. It is indistinguishable from the items that *Spencer* said were the jurisdictional requirements in the law at issue there, and it is indistinguishable from R.C. 4141.282(D)’s requirement here that the notice specify the order being appealed.

Finally, any remaining doubt—though the text and *Spencer* leave no room for doubt—is resolved by the requirement of strict compliance with rules for administrative appeals established by statute. *Zier*, 151 Ohio St. 123, syl. ¶ 1; *Proctor*, 61 Ohio St. 2d 211; *Ramsdell*, 56 Ohio St. 3d at 27; *see State ex rel. Arcadia Acres v. Ohio Dept. of Job & Family Servs.*, 123 Ohio St. 3d 54, 2009-Ohio-4176 ¶ 12 (“[A]dministrative appeals are authorized by statutes that set forth the conditions for the exercise of judicial authority, and those conditions call for strict compliance.”).

**B. The Ninth District’s contrary view was mistaken.**

The Ninth District’s contrary view was mistaken, both in its statutory reading and its resort to the Civil Rules.

First, the court mistakenly found a difference between R.C. 4141.282(D)’s naming requirement and R.C. 4141.282(C)’s requirements by relying on *Zier*. In *Zier*, this Court addressed an earlier and critically different version of the statute governing unemployment

compensation appeals. At that time, the statute was more like the workers' compensation statute reviewed in *Spencer*. The old unemployment statute said that the “notice of appeal shall set forth the decision appealed from and the errors therein complained of.” App. Op. ¶ 19 (quoting former statute). The statute went on to require service and to identify parties, but it did not state those requirements in terms of the notice itself. *Id.* The Court in *Zier* drew the same line as in *Spencer*, finding the requirements tied to the notice of appeal, such as the then-requirement to identify the grounds for appeal, to be jurisdictional, while finding the other requirements, such as party-naming and service, to be nonjurisdictional. *Zier*, 151 Ohio St. at 126-27.

Here, the appeals court erred in superficially comparing this case to the *result* in *Zier*—as it said that here, too, the naming and service rules were nonjurisdictional, because they were in *Zier*—rather than applying the *rule* established in *Zier* (and *Spencer*) to today's different statute. Today's unemployment compensation statute expressly states the party-naming rule as something required *in the notice of appeal*, so it is now like the grounds requirement was then—a jurisdictional requirement.

Second, the Ninth District erred in relying on the Civil Rules as a backup to the statute. The court said that although the statute did not render Pryor's appeal defective, and “an appellee may still seek dismissal pursuant to Civ.R. 12(B)(7) (failure to join a party under Civ.R. 19 or 19.1) or pursuant to Civ.R. 12(B)(5) (insufficiency of service of process).” App. Op. ¶ 11. It added that “[a]lternatively, once an appeal has been perfected, the appellant may seek leave to amend the notice of appeal to cure any nonjurisdictional defects.”

The mistake here flows from the court's statutory error, because the Civil Rules cannot be used to expand jurisdiction where the statute does not allow it, nor to overcome statutory requirements in special statutory proceedings. *See* Civ.R. 82 (“These rules shall not be construed

to extend or limit the jurisdiction of the courts of this state.”); Civ.R. 1 (C)(7) (rules, “to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure . . . (7) in all other special statutory proceedings”); *see Ramsdell*, 56 Ohio St.3d at 28 (rejecting use of Civil Rules to expand statutory timeframe for appeal). Thus, because the statute here established the rules, the Civil Rules do not come into play.

### CONCLUSION

For the above reasons, the Court should grant review and reverse the decision below.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction was served by regular U.S. mail this 14th day of May, 2015, upon the following:

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