Supreme Court of Ohio Clerk of Court - Filed December 14, 2015 - Case No. 2015-0767

In the
Supreme Court of Ohio

MARCUS PRYOR II,	:	Case Nos. 2015-0767; 2015-0770
	:	
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.	:	

REPLY BRIEF OF APPELLANT DIRECTOR,
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

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INTRODUCTION

As the Director's opening brief explained, R.C. 4141.282's plain text says that a common pleas court acquires jurisdiction over an unemployment-compensation appeal only when an appellant files a valid notice of appeal that "shall name all interested parties as appellees." R.C. 4141.282(D). Pryor's response does not overcome this plain text, and he concedes that he "did not name" his former employer, the U.S. Army, "as an appellee in the notice of appeal." Pryor Br. at 4. Pryor instead offers several reasons why this plain statutory requirement should be ignored. None are persuasive, so this Court should apply the jurisdictional provisions as written and hold that Pryor's incomplete notice of appeal had a jurisdictional defect.

The Court has established a pattern that tells the General Assembly how to label requirements that are jurisdictionally required, and the requirement here fits that pattern. Notably, no one doubts that the Assembly *may choose* to make party-naming, or service, or any other requirement, jurisdictional or not. The only question is how the Assembly tells the courts and parties what is jurisdictional. The system is similar to website forms that we fill out often: Several fields are asterisked as "*required field," while others are not. For some sites, an e-mail address is required, but a phone number is not; for other sites, it is the reverse. The Court has told the General Assembly how to figuratively mark a provision with an asterisk: When a statute expressly places a requirement *within* a notice of appeal, the Court has consistently found such a requirement to be jurisdictional. The text here has that "asterisk"; it says "appellant *shall name* all interested parties as appellees *in the notice of appeal*." R.C. 4141.282(D) (emphasis added).

Pryor's contrary view not only conflicts with precedent, but results in an unworkable rule at several levels. As to party-naming in this context, his rule implies that an appellant can name *no* appellees and still move forward. Further, it calls into question the other requirements tied to the notice, such as filing it in a county with jurisdiction. Most important, though, Pryor's view

undermines the guidance this Court has given the General Assembly as to how to mark a requirement as jurisdictional when it wants to. If the formula "the notice of appeal shall . . ." is no longer good enough, then many similar statutes are now unsettled, and the Assembly would have to go back and perhaps add a new magic phrase, like "and is jurisdictional and we mean it," to every such statute. The Court has never required that, and it should not start now.

By contrast, upholding the requirement here not only tracks logic and precedent, but also enforces a common-sense rule that is not hard to follow; it is not some unfair "gotcha" rule. Naming the parties is an essential step, and instructions to do so are not just in the statute, but are included in plain English in the administrative decisions sent to parties. The Commission's decision told Pryor he "must name all interested parties as appellees" in the notice. Director's App'x, Ex. 6 at 4. Pryor simply had to follow that instruction and copy the party list from the Commission's decision. That is not a lot to ask of someone, and as between upholding that rule or upending precedent and unsettling many statutes, the better view is the Director's.

For these and other reasons below, the Court should reverse, and it should reinstate the common pleas court's dismissal of Pryor's case, because he did not file a valid notice of appeal.

ARGUMENT

A. A notice that does not include required elements is not a valid notice at all, so filing an invalid notice of appeal does not vest jurisdiction.

Filing an invalid notice does not vest jurisdiction, so Pryor's reliance on the "act" of filing is misplaced. Pryor relies heavily on the statute's language saying, "[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction." Pryor Br. at 6-8, 12, 20-21 (quoting R.C. 4141.282(C)); *see also* Amicus Br. at 10-12, 18-19. That language does not end the matter. The Director does not dispute that a notice of appeal is all that is necessary to perfect the appeal. But a notice that does not name parties, just like a

notice that does not name the decision below, is not a true "notice of appeal" at all. Just as the Director does not dispute that a notice of appeal is the only "act" required, it should be indisputable from the other side that *some* content is required for the notice to *be* a notice of appeal. If Pryor filed a piece of paper with just his own name and no other information, surely that would not do. The question is *what* content is jurisdictionally required, and the Court's cases consistently hold that statutory requirements that must be included within the notice itself, as opposed to requirements that might be satisfied in some other way, are jurisdictional.

Take *Spencer v. Freight Handlers, Inc.*, 131 Ohio St. 3d 316, 2012-Ohio-880. That statute used the same "only act required to perfect" language. *Id*. ¶ 9. Like Pryor, the claimant there had filed a notice of appeal. But *Spencer*'s analysis hardly stopped there: it focused on "what a valid notice of appeal must contain." *Id*. *Spencer* held that the "notice-of-appeal requirements" (including naming the employer) in the statute's first paragraph *were* jurisdictional, *id*. ¶ 12, while those in the second paragraph did not "dictat[e] additional items that must be included in a notice of appeal" but things "required in addition to" the notice, *id*. ¶ 17. The "only act" language required a "*valid notice*." This makes sense: Despite the mileage Pryor tries to squeeze out of the "only act" language, even he seems to concede the principle that an *invalid* notice fails. Pryor Br. at 21-22. Specifically, he concedes that the requirement to name the order being appealed, contained in a separate second sentence in subsection (C), is a jurisdictional requirement beyond the mere act of filing.

While the "only act required" language does not undercut any separate language governing a notice's *content*, that "only act" language has meaning, as it shows that acts *outside* the notice's four corners, such as serving it, are not required "in addition to" the valid notice. Some statutes, for example, without the "only act" language, do include service as a

jurisdictional requirement. *See Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St. 3d 1242, 2006-Ohio-4091 ¶ 2; *Asbury Apts. v. Dayton Bd. of Zoning Appeals*, 77 Ohio St. 3d 1229 (1997). Under this statute, only the notice is jurisdictional. So, unlike in *Olympic Steel* and *Asbury*, whether Pryor properly served other parties does not affect jurisdiction either way. Failure to serve does not defeat jurisdiction; including service does not overcome a failure to name parties.

Zier confirms that the Court's rule is longstanding, because *Zier* explained that a "right . . . conferred by statute, can be perfected only in the mode prescribed" by the statute. *Zier v. Bureau of Unemployment Comp.*, 151 Ohio St. 123, 125 (1949). To do so, the notice of appeal must meet the statute's "accompanying mandatory requirements": "No one would contend that a notice of appeal need not be filed . . . *such in content as the statute requires*." *Id*. (emphasis added). The content required by the statute is jurisdictional.

Following *Zier*, *Shinkle* explained that a requirement is certainly jurisdictional if it "relates to the informative content." *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St. 3d 227, 2013-Ohio-397 ¶ 19. If filing a notice is jurisdictional, the statutory requirements for that notice are also jurisdictional.

B. The statute says the notice shall name the appellees, creating a required element of the notice.

As for the statutory requirements here, the statute is unambiguous and inescapable: "The Appellant *shall name* all interested parties as appellees *in the notice of appeal*." R.C. 4141.282(D) (emphasis added). That makes naming appellees a required element of the notice, and thus jurisdictional. Pryor did not name all interested parties as appellees, so he did not file a valid notice or perfect the appeal. R.C. 4141.282(C).

1. Naming appellees is a required element of the notice because the text's "notice shall" language is like prior jurisdictional requirements, and unlike prior non-jurisdictional provisions.

The statutory language here is like prior jurisdictional requirements, and unlike those items that were not jurisdictional. Pryor asserts that the "substantive language is the same" in this statute as it was in *Zier*. Pryor Br. at 9-12. That is simply not true. Both *Zier* and *Spencer* found some statutory provisions jurisdictional and others not, with the difference turning on whether the statute expressly tied the requirement to the four corners of the notice.

The Court has consistently held that statutes that use "notice shall" language, like the statute here, create jurisdictional requirements. Examples abound:

- "Such *notice of appeal shall set forth* the decision appealed from." *Zier*, 151 Ohio St. at 126 (emphasis added).
- "*Each complaint shall state* the amount of overvaluation [or] undervaluation." *Shinkle*, 2013-Ohio-397 ¶ 16 (emphasis added).
- "The *notice of appeal shall state* the names of the claimant and the employer." *Spencer*, 2012-Ohio-880 ¶ 9 (emphasis added).

In each case, the Court held that the "notice shall" language showed the General Assembly's intent to create a notice requirement. Again, the statute here follows suit: "The Appellant *shall name* all interested parties as appellees *in the notice of appeal*." R.C. 4141.282(D) (emphasis added). Nothing distinguishes this "notice shall" formula from its use in the cases above.

In contrast, but confirming the rule consistently, the Court has found requirements to be non-jurisdictional when the provisions do not contain "notice shall" language. For example:

- "All other interested parties before the board of review . . . shall be made appellees." *Zier*, 151 Ohio St. at 126.
- "The administrator of workers' compensation, the claimant, and the employer shall be parties to the appeal." *Spencer*, 2012-Ohio-880 ¶ 9.

The provisions in *Zier* and *Spencer* that were found to be non-jurisdictional were stated as mandatory requirements—"shall be" was used in both—and the content in both involved who would be made a party. But neither provision expressly stated that the party-making shall be party-naming *in the notice.* To be sure, the notice is usually the vehicle by which a party is made a party. But when the statute does not expressly state it, the requirement to make someone a party might be met in other ways, such as an amended notice, an appellant's motion to add that party later, or even the missing party's motion to intervene. The bottom line is that only cases that lack "notice shall" language have found similar requirements to be non-jurisdictional, while the Court has found requirements to be jurisdictional in *every case* stating the requirement as an element of the notice of appeal.

The statute here is like the first set and unlike the second set. Even Pryor concedes as much while comparing *Zier*'s non-jurisdictional language (from set 2) to the language at issue here. Pryor Br. at 10-11. The "difference," he says, is that today's provision dictates to "an appellant where and how to name" the parties. *Id.* at 11. Exactly. Today's provision uses "notice shall" language—like prior jurisdictional provisions—to expressly tie the statutory requirement to the required contents of the notice. In fact, Pryor acknowledges that "notice . . . shall" language usually indicates content requirements "that must be pled," before one of his attempts to escape the language. Pryor Br. at 22. The "notice shall" language here expressly indicates a notice requirement, which is jurisdictional, just as this Court has repeatedly found.

To escape the text, Pryor offers a few alternative arguments that ignore the "notice shall" language: that naming requirements can never be jurisdictional, or at least that information in the caption of the notice can never be jurisdictional; and that provisions in the wrong subsection can

never be jurisdictional. Each fails, because each is inconsistent with this Court's emphasis on the text, and on the presence or absence of "notice shall" language.

2. The statutory text determines notice requirements, not the arbitrary judicial rules Pryor suggests.

As shown above, the General Assembly *can* make the naming of appellees a jurisdictional requirement for appellant's notice. Pryor instead argues that the "naming of parties has never been jurisdictional" under unemployment statutes. Pryor Br. at 8-10. He is stuck on *Zier*'s outdated statutory language, though, as the cases he cites show. *Id*. at 8. But the statute has changed, and that is why six appellate courts have found that the *present* language of the unemployment statute makes the naming of parties jurisdictional. Director's Br. at 5. More important, this Court has "recognized that naming proper parties" is a "jurisdictional requirement[]" under "statutes that clearly require" it. *Spencer*, 2012-Ohio-880 ¶ 19. So Pryor's argument is inconsistent with *Zier* and *Spencer*, which both say it *can* be jurisdictional if the text says it is.

The General Assembly can make any part of the notice jurisdictional. *Shinkle* explained that a requirement is certainly jurisdictional if it "relates to the informative content." 2013-Ohio-397 ¶ 19. In a variation on the same argument, Pryor seems to say that information in the caption of the notice can never be "informational content" because it is not in the body of the notice, so a court will not consider it when deciding whether it has jurisdiction. Pryor Br. at 18-19, 21-23. Like his first argument, this too wrongly suggests that the General Assembly cannot do something.

The Court has already rejected that idea. *Spencer* found some naming requirements jurisdictional, and those—like these—were required in the caption. 2012-Ohio-880 ¶ 17. *Zier* said all "accompanying mandatory requirements" for the notice must be met, not just some.

Besides, Pryor's argument presupposes that information in the caption can never "tell[] the court whether it has jurisdiction." Pryor Br. at 18. But it can. For example, an unemployment appeal can be filed either in the county where the employee resides or where he was "last employed." R.C. 4141.282(B). If an employee files in the employer's home county, but fails to list the employer, the court cannot determine its jurisdiction.

3. The statutory text determines notice requirements, not arbitrary distinctions about the statutory structure.

Nor can the outcome turn on the structure or architecture of the statute, that is, whether the General Assembly breaks down the A-B-C divisions or the 1-2-3 subdivisions in a certain way. No judicially created drafting rule says that notice requirements must be in a particular subsection, or that a certain outlining structure makes a difference. Contrary to Pryor's suggestion, the location of the naming requirements in subsection (D), instead of subsection (C), makes no difference. Pryor Br. at 11-12. After all, R.C. 4141.282(A) (timing of appeal) and R.C. 4141.282(B) (place to appeal) indisputably list jurisdictional requirements for the notice, but are not in subsection (C).

Pryor seems to rely on a superficial structural similarity to *Spencer*, but the Court's *Spencer* reasoning supports the Director, as it confirms that subsection breakdown does not matter—the text does. In *Spencer*, one paragraph introduced some naming requirements with "notice shall" language, and the second paragraph did not use that language. 2012-Ohio-880 ¶¶ 9, 17. What made the difference was not the breakdown into subsections, or *Spencer* would have come out the other way. After all, both paragraphs were in the same section, so such an approach would mean everything in the section was jurisdictional. But the Court looked to the *text*, and to the presence or absence of "notice shall" language. Just as inclusion in the same

section cannot mean all requirements are jurisdictional, so, too, dividing requirements into separately lettered sections does not prevent requirements from being jurisdictional.

If the breakdown into separate sections made the difference, the Assembly could change the outcome here not by changing a single word, but merely by deleting the letter (D) and folding the existing text all into C, like so:

> The 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.
>
> The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

Surely it would make little sense for that to be the difference. Conversely, would the requirement to name the decision being appealed—a rule that Pryor concedes is jurisdictional—lose its jurisdictional character if it received its own subsection, like so?:

> (C) PERFECTING THE APPEAL.
>
> (1) The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court.
>
> (2) The notice of appeal shall identify the decision appealed from.

Surely numbering the sentences (1) and (2) should not matter, nor would it matter if the requirement to "identify the decision appealed from" were put in letter (D) or (E) or even in another numbered statute, such as R.C. 4141.283. The "notice shall" *text* matters, not the outline, or the Assembly's sensible choice to place the jurisdictional requirements across four subsections to make it easier to read.

Pryor might not expressly state that his argument turns on this structural idea, but it logically does. After all, he conceded that the requirement to name the "decision appealed from" is jurisdictional, but the *only* distinction between that one and the party-naming one is that the

"decision appealed" sentence is placed in the same division as the "only act" sentence. The only other possible distinction would be that party-naming is somehow not "inherently" needed for a notice, while naming a decision below is. But that notion suggests that some "inherent nature" governs, as opposed to the established rule that the General Assembly can decide for itself which requirements to make jurisdictional. And the Assembly showed its decision by using the "notice shall" formula that the Court has consistently used.

C. The *Shinkle* test shows that the party-naming requirement is jurisdictional.

Likewise, the *Shinkle* test shows that the requirement is jurisdictional, just as the Court's other cases do, as this provision meets both prongs of that test. *See* Director's Br. at 10-12. *Shinkle* says a statutory provision that "relates to the informative content of the document" instigating the proceeding is likely jurisdictional. 2013-Ohio-397 ¶ 19. As shown above, the provision satisfies this factor because it says the notice of appeal "shall" name the appellees. *Shinkle*'s other prong says that jurisdictional requirements are "imposed on the appellant itself." *Id*. Here, the statutory text instructs "*[t]he appellant*" to name parties in the notice. Director's Br. at 11 (quoting R.C. 4141.282(D)). That satisfies *Shinkle*.

The *Commission's* separate duty to list the parties in its decision—a separate document that of course precedes the notice—does not factor into *Shinkle*'s analysis. Pryor briefly suggests, without citation, that the statute's naming-requirement somehow does not meet *Shinkle* because the same statutory subsection also requires the Commission to provide the names and addresses of interested parties in its final decision. Pryor Br. at 17-18. That, he says, imposes the requirement on both the appellant and the Commission. *Id*. But the Commission and an appellant do not jointly shape the notice of appeal; the appellant alone holds the pen. True, the notice can only come after the administrative decision, and its content turns on what the decision does. But by that logic, no statute would meet *Shinkle*, because filing a notice of appeal always

depends on an agency's first issuing its final decision. The jurisdictional provision in *Zier*, for example, required a notice to "set forth the decision appealed from." *Shinkle*, 2013-Ohio-397 ¶ 19. But that cannot be what *Shinkle* means. Besides, an appellant is not at the mercy of the Commission to know that his employer is an interested party—the statute already tells him that every party before the agency is an "interested party," R.C. 4141.01(I), and thus is to be named again in the appeal to the common pleas court, without regard to a subjective inquiry into how "interested" a party "really" is.

Finally, an appellant's reliance on the Commission to name the right parties, and give the right addresses, does not change the outcome. The Director readily concedes that if the agency makes a mistake in its decision, whether by naming the wrong parties or listing a wrong address, an appellant who copies-and-pastes that mistaken information into its notice of appeal has complied with the statute. It has named the interested parties *as they were named in the* decision, thus meeting the statute's literal terms. Here, the administrative decision listed all interested parties, so Pryor has no excuse for not copying it. Commission's Decision, App'x Ex. 6, at 4-5.

D. Pryor's former employer is an "interested party" under the statute, and an appellant cannot substitute his subjective view of a party's "real interest."

The statute requires appellants to name all "interested parties" in the notice of appeal; Pryor's former employer is an "interested party." An "interested party" means "the director and any party to whom notice of a determination" is required under R.C. 4141.28. R.C. 4141.01(I). This includes "the claimant, the most recent separating employer, and any other employer involved in the determination." R.C. 4141.28(E). A former employer, then, is expressly an "interested party." Contrary to the amicus brief's assertions, Amicus' Br. at 18, finding that definition is not difficult.

Here, Pryor's former employer is the U.S. Army, and it is an interested party. Pryor suggests that the Army's "status as an interested party was unclear" because it was not expressly identified as an interested party by the Commission and was not involved in the underlying dispute. Pryor's Br. at 3-4, 27; Amicus Br. at 19-21. The Army's status as an interested party was mandated by statute. Even if Pryor misread the statute, he had the Commission's own instructions in front of him, as the Commission sent notice of its decision to the Army as an interested party, as R.C. 4141.28 and R.C. 4141.281 requires. Director's App'x Ex. 6, at 4-5.

While the statute's definition ends the matter, the Director notes that Pryor is wrong on the facts, too, as the Army asserted its interest at the agency level. The Army's Human Resources Command, in fact, appealed the Director's initial grant of benefits to Pryor. *See* Pryor's App'x at 2. Even if the Army had not asserted its interest by filing the appeal, it would still be an "interested party." An interested party includes those who *could* have an interest, not just those who were actively involved below.

Most important, the issue before the Court is a bright-line one of whether *all* appellants must name *all* interested parties in notices of appeal in *all* cases. The Court's rule of law should not be that parties must name parties that are somehow "really interested," but need not name those who are "not so interested," or, in the appellant's opinion, will not be interested at the common pleas level, as opposed to the agency level.

E. Pryor's notice is invalid under any standard, because he did not comply at all.

Typically, this Court follows the plain text in jurisdictional statutes and strictly construes the courts' jurisdiction when a statute creates that jurisdiction. But Pryor suggests that this Court should analyze his failure to comply with the statute under a "substantial compliance" test. Pryor Br. at 24-27. This Court need not, and should not, wade into that issue. That is so because

relaxing the standard would not help him, as under any standard, Pryor's notice does not comply with the statutory requirement at all.

1. Pryor's notice is invalid under any standard.

The statute requires Pryor's notice of appeal to name his former employer as an appellee, R.C. 4141.282, but his notice concededly does not do so, Pryor Br. at 4. Pryor spends very little space explaining why his compliance was "substantial," Pryor Br. at 27, and for good reason. He did not comply at all. He can only meet the "substantial compliance" standard if he attempts to name his former employer and does so in a way that substantially complies with what was required.

Complying with *other* requirements is not enough, contrary to Pryor's suggestions. Pryor Br. at 27. Filing a timely notice, for example, does not excuse the failure to name the proper parties, just as naming the proper parties would not excuse filing a late notice. The same is true of Pryor's other examples, like filing in the right court. A late notice in the right court does not vest jurisdiction, any more than a timely notice in the wrong court. Nor is it enough that he named the Director. He must name both the Director and the employer, and naming one does not "substantially" comply with the requirement to make the other a party. That failure is particularly egregious because his invalid notice failed to inform the U.S. Army that they were a party to the appeal. Pryor must comply with each requirement.

Take *Moore v. Foreacher*, 156 Ohio St. 255 (1951), which Pryor construes as a substantial compliance case (Br. at 25). In a pre-xerox era, *Moore* held that a notice met the specific statutory requirement to "set forth or . . . have attached" the administrative decision, because the notice "set forth" the contents of that decision, including the docket number, "the substance and effect" of the decision, and appellant's dispute with the decision's factual findings. *Id*. at 260. That "sufficiently" complied with the statute's "set forth" requirement. *Id*.

By contrast, Pryor did not begin to comply with the specific requirement to name his former employer, let alone do so substantially—he simply did not name the employer at all. The analogy to *Moore* might persuade if Pryor had named his employer, but listed the wrong address or the wrong department of the U.S. Army, or even said "the United States" or the federal government. That would be naming someone, but doing so imperfectly. Alternatively, as noted above, the Director agrees that an appellant satisfies the statute if, in good faith, he simply copies the list of interested parties from the administrative decision, Pryor Br. at 4-5, but that list turns out to be incomplete. Such a case would be like *Moore*. But that is not the case here. The administrative decision *did* list the parties, and Pryor failed to copy-and-paste that information into his notice. Thus, Pryor did not comply with the "name all parties" requirement under any standard, so the Court should not revisit or change the standard.

2. The Court has applied strict compliance in unemployment-compensation appeals, and it should not extend *Fisher* to overrule that precedent.

As the Director's opening brief explained, the Court has long applied a strict compliance standard to jurisdictional requirements in administrative appeals, Br. at 6-7, and has specifically applied that standard to these jurisdictional requirements, *id.* (quoting, *e.g.*, *Zier*, 151 Ohio St. at 125; *In re King*, 62 Ohio St. 2d 87, 88 (1980)). In response, Pryor cites cases interpreting a different statute, and a string of appellate decisions that have mistakenly applied those cases to this statute. Pryor Br. at 24-27 (citing, *e.g.*, *Fisher v. Mayfield*, 30 Ohio St. 3d 8, 505 N.E.2d 975 (1987)). But *this* Court's precedent regarding *this* statute is clear.

Statutorily created jurisdiction is strictly construed. This Court has repeatedly applied that rule to judicial review of administrative decisions in a variety of contexts, and should continue to do so here. *State ex rel. Arcadia Acres v. Ohio Dep't of Job and Family Servs.*, 123 Ohio St. 3d 54, 2009-Ohio-4176 ¶ 12 ("administrative appeals" are treated differently because

they "are authorized by statutes that set forth the conditions for the exercise of judicial authority, and those conditions call for strict compliance"); *see also Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St. 3d 149, 2014-Ohio-5030 ¶ 14 (2014) (parties must meet "strict . . . requirements" if the statute makes them "jurisdictional" in "administrative appeals"); *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St. 3d 330, 2008-Ohio-2454 ¶ 13 (statute "strictly defines [the Court's] authority to correct alleged errors" by agency); *Hughes v. Ohio Dep't of Commerce*, 114 Ohio St. 3d 47, 2007-Ohio-2877 ¶ 12 (R.C. Chapter 119 requires Court to determine whether parties "strictly complied" with requirements).

Because this Court strictly construes statutorily created jurisdiction, this Court should not extend *Fisher*. As former Chief Justice Moyer said in his dissent from *Fisher*, the courts' jurisdiction over administrative appeals is limited by the General Assembly's proper exercise of its "constitutional authority to establish" jurisdictional requirements. *Fisher*, 30 Ohio St. 3d at 12-13 (Moyer, J., dissenting). Where the General Assembly uses "shall" it indicates a mandatory requirement, not an optional one. *Id.* Extending *Fisher* would turn this Court's recent case law, which emphasizes the text, on its head.

F. Both the party-naming rule here and the Court's rule for "notice shall" cases set common-sense standards that parties, courts, and the General Assembly can easily follow, while Pryor's rule is unworkable at all levels.

Reaffirming that "notice shall" language creates jurisdictional requirements will benefit all parties and the system as whole, whether parties who must draft notices, courts that must apply the rule, or the General Assembly in drafting statutes.

First, any alternative is unworkable for guiding parties and courts as to what must now be included in a notice of appeal. Vesting jurisdiction without a naming requirement creates a series of "pitfalls" that threaten the parties' rights, as the *Spencer* concurrence explained. 2012-Ohio-880 ¶ 27. Either the statute requires a notice to name all appellees, or it does not require

naming any appellees at all. Director's Br. at 14. No reading of the text excuses Pryor's mistake without also allowing appellants to leave off all appellees, or name the employer but not the Director. *DiKong v. Ohio Supports, Inc.*, 2013-Ohio-33 (1st Dist.) (no jurisdiction over appeal that named the employer but not the Director); *Sydenstricker v. Donato's Pizzeria, LLC*, 2010-Ohio-2953 (11th Dist.) (same). When enforced, as it should be, the party-naming rule protects both employers and employees. If an *employee* who appeals does not need to name his former employer, then the inverse is also true; an *employer* who appeals does not need to name his former employee. R.C. 4141.282(B). The Director's rule takes a common-sense approach and protects the rights of all parties.

It also benefits the judicial system as a whole. The party-naming requirement is essential to the smooth and efficient operation of the judicial process, because a valid notice triggers the next steps in the process. Director's Br. at 14-15. It focuses judiciary resources on the merits, rather than procedural questions like this one. Reaffirming this Court's "notice shall" rule will help keep future cases like this one off the Court's docket.

A straightforward "notice shall" rule also benefits appellants, by telling them exactly what to do. Director's Br. at 15-16. This is not a "gotcha" case. The statutory requirements are written in unmistakable "notice shall" language specifically to make it easier for appellants to understand. *See* Amicus Br. at 12-18. The Commission names all interested parties in its decision. All that appellants must do is copy and paste that list into their notice. That is easy.

Second, any decision that undercuts the jurisdictional nature of the party-naming rule also calls into question the other requirements in the statute, some of which are equally tied to the notice. For example, Pryor concedes that the requirement to "identify the decision appealed from" is a jurisdictional one, but his concession does not settle the question. As explained

above, nothing distinguishes that requirement other than its placement in 4141.282(C), so unless the Court adopts a new "same division" rule, that requirement is on shaky grounds. Likewise, subsection (B)'s requirement to file the notice in a proper county is also called into question, as one could, under Pryor's "only act" theory, file a "timely" notice in the wrong place. The Court can avoid all that uncertainty by following it's "notice shall" approach instead.

Finally, the Court's straightforward adherence to the "notice shall" rule guides the General Assembly, which can easily tailor statutes to include or exclude such language to establish requirements as jurisdictional or not. Recognizing the Court's pattern of making "notice shall" language jurisdictional, the General Assembly was able to quickly fix the statute in *Spencer*. 2012-Ohio-880 ¶ 20 (the statute's notice-shall language "does not say 'names of the claimant and the employer *and the administrator*'") (emphasis original); R.C. 4123.512(B) (2014) (making that precise change). But if the Court does not follow that same rule here, it will be moving the goalposts from *Zier*, *Shinkle*, and so on, leaving the General Assembly unclear on what it must do *next time* to indicate its intent to make a requirement jurisdictional, or even what to do to amend *this* statute if it wishes as it did after *Spencer*. If "notice shall" is no longer good enough, it would be unclear what would be.

Conversely, if the Court follows its pattern and upholds the requirement as jurisdictional, it would be easy enough for the General Assembly to amend the statute to change that result, by amending that "notice shall" language. The Assembly has done that before in response to strict-compliance decisions from this Court, and it could do so again. *See Medcorp, Inc. v. Ohio Dep't of Job & Family Servs.*, 121 Ohio St. 3d 622, 2009-Ohio-2058 ¶ 2 (requiring a specific statements of the "grounds of the party's appeal"); *Hughes*, 2007-Ohio-2877 ¶ 19 (original notice of appeal must be filed with the agency rather than the common pleas court); R.C. 119.12(D)

(clarifying that "[t]he notice of appeal may, but need not, set forth the specific grounds") and R.C. 119.12(A)(2) (fixing text to require notice of appeal to be filed in the common pleas court).

G. Pryor's remaining arguments are irrelevant and wrong.

While the above analysis fully resolves this case, the Director notes that Pryor's remaining arguments are irrelevant and wrong.

Facts specific to Pryor's case should not set the rule for other cases. He emphasizes two things. First, Pryor says the Army was served, and that this should vest jurisdiction. Pryor Br. at 27. But service is not a jurisdictional requirement under this statute. And if Pryor's reading of the statute is correct, an appellant would not need to name appellants *or* serve them. Besides, serving the Army with a notice that does not name them does not give them notice that they are a party. Second, he suggests he did not name the Army because of its sovereign immunity. Pryor Br. at 4 & n.3. But if he is right on the statute, appellants would never need to name an employer. Besides, sovereign immunity just means the federal government cannot be *sued* for alleged wrongdoing without its consent, not that it can never be a named party. Wright & Miller, 33 Fed. Prac. & Proc. § 8403. Pryor is not suing the Army, and is not alleging any wrongdoing on the part of the Army. Besides, it was the Army that appealed before the Commission, making itself a party and thereby providing consent even if consent were needed.

Finally, even the nine unemployment appeals Pryor cites show that his case is an outlier, contrary to Pryor's claim of "frequent errors" by the Commission and other appellants. Pryor Br. at 4-5, 18; APP-4 and APP-5. First, these filings are outside this case's record, so they cannot be attached as appendices now. (Also, Pryor is mistaken in suggesting these nine are all that were filed in his selected timeframe; at least twenty were filed then.) Second, these samples do not show the errors he alleges. Four are not benefits cases, but are unemployment *contribution tax* cases, which fall under a different statute, R.C. 4141.26, with different notice requirements.

Devengencie is a Medicaid case under another statute. *Hunter*, *RCJ Petroleum*, and *Lambert* all name both their former employer or employee, and the Director. And *Goines* named her former employer (unlike Pryor), but mistakenly names the Commission rather than the Director. Thus, none support Pryor's claims. Most important, if the Commission or the Director ever does err, this Court should follow whatever statutes apply to hold the Commission to the rules—as it should hold Pryor and every party to the rules that the General Assembly establishes.

CONCLUSION

For the above reasons, the Court should hold that R.C. 4141.282(D)'s requirement that the appellant name all interested parties as appellees in the notice of appeal is a jurisdictional requirement, and it should answer the certified-conflict question "yes." Accordingly, it should reverse the appeals court's decision and reinstate the common pleas court's dismissal of Pryor's administrative appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Appellant Director, Ohio Department of Job and Family Services was served by regular U.S. mail and e-mail this 14th day of December, 2015, upon the following:

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