

In the  
**Supreme Court of Ohio**

STATE EX REL.	:	
DIRECTOR, OHIO DEPARTMENT OF	:	
AGRICULTURE,	:	
	:	
Relator,	:	
	:	
v.	:	CASE NO. 2016-0729
	:	
THE HONORABLE FRANK G. FORCHIONE,	:	ORIGINAL ACTION FOR WRIT OF
	:	PROHIBITION
	:	
Respondent.	:	

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**EMERGENCY MOTION TO EXPEDITE FOR  
A RULING BY WEDNESDAY, MAY 18, 2016**

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The Director of the Ohio Department of Agriculture (“Director”) asks the Court to act immediately, so he can avoid having to release dangerous wild animals to an owner with no permit and no proof of containing the animals safely. The Director files this Motion to complement two urgent filings late yesterday: (1) a Complaint in Prohibition and (2) an Emergency Motion for Peremptory or Alternative Writ of Prohibition and Combined Memorandum in Support of Relator’s Complaint and in Support of Emergency Motion. While the latter, the Emergency Motion, argues for fast action as well as arguing the merits, the Director files this separate motion to stress why the Director respectfully urges the Court to act immediately, and to explain what steps the Director urges. The Director urges the Court to first immediately order the Respondent (and allow the opposing party in the underlying case if she wishes) to respond by **Friday, May 13**, and the Director asks this Court to rule, at least on an alternative basis, by **Wednesday, May 18, before the animals must be released on May 19**.

The facts here justify the urgency. The Director took temporary custody of ten dangerous wild animals last week: five tigers weighing between 270-512 lbs., two pumas, two baboons, and a chimpanzee. The Stark County Court of Common Pleas issued a temporary restraining order on May 5 ordering the Director to return the animals, by May 19, to Cynthia Huntsman, the owner from whom the Director took the animals. Huntsman has no permit to hold them, and the Director does not know enough about her cages or other containment features to assess the danger to public safety that would arise from returning the animals.

The Director wishes only to preserve the safe status quo—with the animals in the Department’s safekeeping—while the process plays out. If Huntsman somehow prevails after the proper administrative process—which seems impossible, but that is for the process to resolve—she could get the animals back. Today’s urgency is only about whether the tigers and other dangerous wild animals should be, in the coming weeks or months, kept in professional facilities under the Director’s oversight, or on Huntsman’s property. The Director is not just the better choice: He is the General Assembly’s statutory choice.

The law here is also straightforward, as the other Emergency Motion details, regarding the Director’s authority and the common pleas court’s patent lack of jurisdiction. Ohio’s Dangerous Wild Animals Act, R.C. Chapter 935, empowers the Director to transfer dangerous wild animals into his own custody in state-approved facilities, or to order them quarantined on an owner’s property, when he “has reason to believe” that Ohio statutes are not being followed. R.C. 935.20(A). That transfer is temporary, and it allows the Director to keep the public safe during an ongoing investigation and administrative process. Here, the Director had reason to believe a violation occurred, as Huntsman has never applied for a permit to keep the animals.

As, again, the other Motion details, the case for prohibition is solid, as the Court has repeatedly granted writs of prohibition to prevent lower courts from interfering in special statutory proceedings such as administrative-agency actions. The Court has held that “actions for declaratory judgment and injunction are inappropriate where special statutory proceedings would be bypassed,” that “courts have no jurisdiction to hear such actions in the first place,” and that writs of prohibition are justified to enforce that limit. *State ex rel. Albright v. Delaware Cnty. Ct. of Common Pleas*, 60 Ohio St. 3d 40, 42 (1991); *see also State ex rel. Taft-O’Connor ’98 v. Franklin Cnty. Ct. of Common Pleas*, 83 Ohio St. 3d 487, 489 (1998); *State ex rel. Wilkinson v. Reed*, 99 Ohio St. 3d 106, 2003-Ohio-2506. Thus, the court here had no jurisdiction to order the Director to return the animals to Huntsman, as the administrative process governs first.

In light of the factual urgency and the legal clarity, the Court should act quickly, as the Director asks. The Director does not lightly ask the Court to act so quickly, and understands of course that the Court, not the parties, sets deadlines. But he urges this particular deadline because public safety requires it. This is not about where paperwork is processed; it is about where dangerous tigers are held in the interim. The Director has filed this case diligently, and sought to obtain the hearing transcript (received yesterday) to demonstrate to this Court the clarity of the issue. The lower court’s May 19 deadline requires the Director to ask this Court to grant at least temporary relief by **Wednesday, May 18**. To allow the Court at least some time for consideration, the Director thus asks the Court to order any responses to be filed by **Friday, May 13**. Of course, the Court can order temporary relief through an alternative writ if it wishes, and then proceed to consider the matter further, or it can issue a final writ, given the clarity of the

law and facts here. And it may issue an order with any opinion to follow, to save time in the interest of public safety.

In sum, the Director again respectfully and urgently asks the Court to act so that the Director is not forced to release these dangerous wild animals to Huntsman next Thursday.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Emergency Motion To Expedite was sent by regular U.S. mail and electronic mail, this 11th day of May, 2016, to the following:

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A courtesy copy was also served by regular U.S. mail and electronic mail to counsel for the plaintiffs in the underlying common pleas court case:

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*/s Eric E. Murphy*  
ERIC E. MURPHY  
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