

In the  
**Supreme Court of Ohio**

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

---

**AMENDED EMERGENCY MOTION FOR PEREMPTORY OR ALTERNATIVE WRIT  
OF PROHIBITION AND COMBINED MEMORANDUM IN SUPPORT OF RELATOR'S  
COMPLAINT AND IN SUPPORT OF EMERGENCY MOTION**

---

MICHAEL DEWINE (0009181)  
Attorney General of Ohio

ERIC E. MURPHY\* (0083284)  
State Solicitor  
*\*Counsel of Record*

PETER T. REED (0089948)  
Deputy Solicitor

JAMES R. PATTERSON (0024538)  
LYDIA M. ARKO (0085597)  
Assistant Attorneys General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
614-466-8980; 614-466-5087 fax  
eric.murphy@ohioattorneygeneral.gov

Counsel for Relator  
Director, Ohio Department of Agriculture

**EMERGENCY MOTION FOR PREEMPTORY  
OR ALTERNATIVE WRIT OF PROHIBITION**

Relator, the Director of the Ohio Department of Agriculture (“Director”), moves the Court, under Supreme Court Practice Rule 12, to grant an alternative writ immediately, or by **Wednesday, May 18**, to prohibit action in the Stark County Court of Common Pleas in the case *In re: Cynthia Hunstman Transfer of Dangerous Wild Animals*, No. 2016-MI-138. That court patently lacks jurisdiction to act because, as the Memorandum below shows, oversight of dangerous wild animals is committed to special statutory proceedings before the Department.

Immediacy is needed because the common pleas court has ordered the Director to return ten dangerous wild animals—five tigers, two pumas, two baboons, and a chimpanzee—to Cynthia Huntsman by Thursday, May 19, 2016. Returning those animals is a significant risk to public safety and to the animals’ health. In a separate Motion to Expedite filed today, the Director asks the Court to expedite by ordering Respondent to respond by Friday, May 13, and by granting at least temporary relief by **Wednesday, May 18**, to preserve public safety.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General

*/s Eric E. Murphy*

ERIC E. MURPHY\* (0083284)  
State Solicitor

*\*Counsel of Record*

PETER T. REED (0089948)

Deputy Solicitor

JAMES R. PATTERSON (0024538)

LYDIA M. ARKO (0085597)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980; 614-466-5087 fax

[eric.murphy@ohioattorneygeneral.gov](mailto:eric.murphy@ohioattorneygeneral.gov)

Counsel for Relator

Director, Ohio Department of Agriculture

## COMBINED MEMORANDUM IN SUPPORT

### INTRODUCTION

The Director of Ohio's Department of Agriculture urgently asks this Court to preserve both public safety and the rule of law. A court acting without jurisdiction has ordered the Director to release a menagerie of dangerous wild animals to someone with no permit to hold them. Specifically, the Stark County Court of Common Pleas has ordered the Director to return, **by May 19**, ten wild animals—five tigers, two pumas, two baboons, and a chimpanzee—to Cynthia Huntsman, who does not have a permit for those animals. That lower court has no jurisdiction to do so, because the General Assembly has established special statutory proceedings for oversight of dangerous wild animals: The Department's administrative process comes first, with appeal to court available later. That lack of jurisdiction calls for immediate correction before the court order's deadline, because returning such animals is dangerous, even deadly.

This Court has repeatedly granted writs of prohibition to block lower courts from interfering in a subject committed to agency proceedings. Each time, the Court has held that “actions for declaratory judgment and injunction are inappropriate where special statutory proceedings would be bypassed,” and that “courts have no jurisdiction to hear such actions in the first place.” *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. The lack of jurisdiction here—and thus the need for prohibition—is as straightforward as in any of those prohibition cases, with an added factor: a great risk to public safety.

Here, the General Assembly has undoubtedly committed this topic to an agency process, as the Dangerous Wild Animals Act authorizes the *Director* to issue a transfer order removing dangerous wild animals to state-approved facilities during an ongoing investigation into a likely

violation of the Act. R.C. 935.20(A). Here, the Director has reason to believe Huntsman violated the Act by holding these animals without a permit. He is thus authorized to issue a transfer order to protect public safety. *Id.* That transfer is temporary, to preserve public safety during an agency proceeding, and animals can be returned later if the Director is wrong after a permanent seizure action filed in Court pursuant to R.C. 935.20(H). That is, Huntsman has every right to an administrative adjudication at the agency under Chapter 119. R.C. 935.20(D). After that, she can appeal to court under R.C. 119.12—but that appeal comes *after* the administrative process, and a court cannot step in earlier.

Yet here, a court did step in to short-circuit the administrative process, and that was wrong. Respondent Judge Frank Forchione, of the Stark County Court of Common Pleas, issued a temporary restraining order requiring the Director to return the animals to Huntsman **by May 19**. As in *Albright*, this attempt to bypass the agency’s administrative process is inappropriate, as the court lacked jurisdiction to hear the action at all, and his order justifies a writ of prohibition to protect the statutory process. The lower court had one valid role in the process—it properly issued a search warrant to allow the Department onto Huntsman’s property to look for illegally held animals. But from there, the Director’s statutory powers took over, both to transfer the animals and to oversee any administrative process. The issuance of a warrant does not give the court ongoing jurisdiction over the whole process. If that were so, all administrative processes that involve court-enforced warrants or subpoenas could be similarly short-circuited.

The Director asks this Court to act immediately, **by Wednesday, May 18**, to block the lower court’s temporary restraining order and prevent these dangerous wild animals from being returned to a non-permitted owner and a potentially unsafe situation. The Court should issue an

immediate peremptory writ or an alternative writ to do so. The Director has separately moved the Court to expedite briefing to meet this urgent deadline and protect public safety.

### **STATEMENT OF THE CASE AND FACTS**

This case does not turn on the dispute between the Director and Huntsman over her ownership of the animals, but turns on the jurisdictional dispute between the Director and the lower court over who decides the underlying Director-vs.-Huntsman dispute, and over who decides where the animals are kept in the interim. Consequently, the Director begins this fact statement with the basic legal framework of Ohio's Dangerous Wild Animals Act, and he then explains the Huntsman dispute and the court's action.

**A. Ohio's Dangerous Wild Animals Act empowers the Director of Agriculture to issue an administrative transfer order to seize dangerous wild animals during an investigation, and a party may dispute any action in an administrative process with an administrative appeal to court.**

Ohio enacted its Dangerous Wild Animals Act, R.C. Chapter 935, in response to a well-publicized disaster in Zanesville. In that incident, many dangerous animals were released in a community, requiring law enforcement and animal experts to work together to capture and even kill over 55 dangerous wild animals, including lions, tigers, and bears. The General Assembly quickly responded with the Act, which tasked the Department of Agriculture with implementing and enforcing a comprehensive statutory scheme to ensure public safety and animal health. The system includes registration requirements, a comprehensive permitting process, and a wide range of comprehensive and detailed requirements covering everything from sanitation and health care to details about how fencing is constructed. R.C. 935.17. No dangerous wild animal may be held without a permit from the Department of Agriculture after January 1, 2014, except under narrow exemptions. R.C. 935.02(A)-(B), R.C. 935.05(A), R.C. 935.07(A), R.C. 935.101(A)(1).

This case involves only a seemingly small, but critical, part of this broader scheme: the power to seize animals immediately if held without a permit. The Department “shall” initiate an investigation if it “has reason to believe” that a dangerous wild animal is possessed by a person who does not have a permit. R.C. 935.20(A). The Department “may enter at all reasonable times” where dangerous wild animals are located. R.C. 935.19(A)(1). To enter property, the Department must obtain the owner’s consent or a search warrant from a court of competent jurisdiction to enter and search the premises for evidence of any violation of R.C. Chapter 935 upon a showing of probable cause. R.C. 935.19(A)(2)-(3).

If the Department believes an owner violated the statute either by not having a permit or violating a permitting requirement, it has two immediate remedies during the investigation. The Department may quarantine such dangerous wild animal(s) on site, restricting any movement of the animals on and off the property. R.C. 935.20(A). Or it may order the immediate transfer of the animals under an administrative transfer order. R.C. 935.20(A). If transfer is needed, he may house the dangerous wild animals at any facility approved for this purpose. R.C. 935.20(A) and 935.20(K). Those administrative orders do not require a warrant or court approval, but are vested in the Director. That is, the warrant’s scope is limited to entering the property, but from that point, everything flows from the Assembly’s statutory grant of power to the Director.

If an owner timely requests a hearing, the Department proceeds to administrative review, including a hearing, objections to a hearing officer’s report, and an order reviewing the validity of the initial transfer order. R.C. 935.20(D); *see* R.C. 119. After that process, a party may seek judicial review of the administrative order through an appeal under R.C. 119.12.

Neither form of temporary order—a quarantine order or a transfer order—affects the animal owner’s ownership interest in the dangerous wild animal(s). After all administrative

remedies are exhausted, the Department shall initiate a permanent seizure proceeding asking a court of competent jurisdiction for a final order deciding the method of disposition of any dangerous wild animals. R.C. 935.20(H). Only at that point may an animal owner's ownership interest may be lost. The Director's authority under R.C. 935.20(A) is only provisional, designed to secure the animals during the course of the investigation and administrative proceedings to protect public safety and animal health.

**B. Over the past four years, Huntsman has repeatedly tried and failed to establish an exemption from the Dangerous Wild Animals Act's requirements.**

Owning dangerous wild animals requires a permit from the Department or an exemption from that requirement. In 2012, just after the law became effective, Cyndi Huntsman ("Huntsman") told the Department she had two Syrian brown bears, two baboons, six black bears, one bobcat, one chimpanzee, two North American cougars, one black panther, two albino Burmese pythons, two Siberian tigers, eight Bengal tigers, one serval, two American alligators, two African lions, and two gray timber wolves. Simmerman Aff. ¶ 5 (attached as Ex. A to Complaint; all cited exhibits are also attached to Complaint). She sought an exemption from the Act's permit requirements, asserting that she was in the process of obtaining accreditation from the Zoological Association of America. *Id.* ¶ 6. Absent an exemption, Huntsman was required to obtain a permit for her dangerous wild animals by January 1, 2014. R.C. 935.02(A).

Over a month after she missed that deadline, the Department notified Huntsman that she had not applied for a dangerous wild animal permit. In reply, her attorney, John L. Juergenson, asserted a new theory. Huntsman had an educational permit from the Ohio Department of Natural Resources ("ODNR") that allowed her to keep a bald eagle. ODNR Permit, Ex. A-1. She asserted that this bald eagle permit meant she was exempt from the permitting requirements of the Dangerous Wild Animals Act for *all* animals, including the lions, tigers, bears, and other

animals she owned. The Department explained that her bald eagle permit, *see* R.C. 935.03(B)(10), did not authorize her to keep any dangerous wild animals. The Department and Huntsman exchanged further correspondence in August and October 2014, in which Huntsman continued to assert an exemption on the basis of her bald eagle permit, and the Department continued to deny that Huntsman was exempt.

From 2014 to early 2015, Huntsman smuggled off her property several dangerous wild animals that had not been reported to the Department. Those included a spotted leopard and a black leopard, transferred to a park in Calvert, Texas on December 18, 2014; a crested macaque, transferred to Smalley Exotic Farm, LLC in Silver Lake, Indiana on February 4, 2015; and a tiger cub to Wild Acres Ranch in Sandusky, Ohio on February 23, 2015. *Simmerman Aff.* ¶ 16. Under Ohio law, “no person shall acquire, buy, sell, trade or transfer possession or ownership of a dangerous wild animal.” R.C. 935.02(B)(1). But the Department did not learn of these violations until sometime after they occurred.

On March 5, 2015, Huntsman notified the Department that she was also claiming an exemption from the Dangerous Wild Animals Act on the basis of her pursuing accreditation from the Zoological Association of America (“ZAA”), one of the two major entities that licenses zoos in the United States. Huntsman provided the Department with documentation of the steps that she intended to take in order to obtain this accreditation, including a reduction in the number of animals in her possession. In the latter half of 2015, Huntsman voluntarily relinquished to the Department some of the dangerous wild animals in her possession, including four black bears (in July), four alligators (in September), and two black bears and two Syrian brown bears (in December). She maintained possession of her other dangerous wild animals.

In that same late 2015 period, Huntsman transported an unregistered Bengal tiger cub to New York City (on November 16, 2015). Simmerman Aff. ¶ 16. The Department also learned of other discrepancies between the animals registered by Huntsman and the animals actually determined to be in her possession. For example, in addition to the two Syrian brown bears relinquished to the Department, Huntsman also transported a third Syrian brown bear to Sandusky, Ohio on January 2, 2015. However, only two Syrian brown bears were ever registered with ODA. Similarly, while Huntsman surrendered four alligators to the Department in September, 2015, she had registered only two alligators.

On January 7, 2016, United States Department of Agriculture Inspector Randall Coleman inspected Huntsman's Premises. Simmerman Aff. ¶ 10. USDA inspections do not affect the Ohio Department of Agriculture's enforcement of Ohio's dangerous wild animal law. During that inspection, Inspector Coleman observed that Huntsman possessed a chimpanzee, two Hamadryas baboons, two pumas, and five tigers. Each of these animals is classified as a "dangerous wild animal" under R.C. 935.01.

Huntsman had not obtained a permit from the Department for these animals and had failed to successfully establish any exemption, so the Department issued a quarantine of the animals in March 2016 under R.C. 935.20 to facilitate an investigation of possible violations of R.C. Chapter 935 by Huntsman. Simmerman Aff. ¶ 11. On March 3, 2016, Department veterinarians Dr. Melissa Simmerman and Dr. Dennis Summers, along with Department enforcement agent William Lesho, visited the Huntsman premises to deliver the Quarantine Order for her dangerous wild animals, and observed the same ten dangerous wild animals on her property at that time. *Id.* Huntsman requested a Chapter 119 administrative hearing with regard to the quarantine order, which has been scheduled before a hearing officer in August 2016. In

light of Huntsman's previous statement that she was seeking accreditation for her facility in order to become exempt from R.C. Chapter 935, the Department sent Huntsman a letter on April 1, 2016, asking her to provide documentation of her accreditation status by May 2, 2016. Simmerman Aff. ¶ 12. On that date (May 2, 2016), her attorney Juergenson provided a letter from Kristi de Spain, Executive Administrator of the Zoological Association of America sent to Huntsman in December 2015. Letter, Ex. A-3. In that letter, the Association denied Huntsman's application for professional membership, a necessary prerequisite for accreditation.

**C. The Department issued a transfer order for these dangerous wild animals, the Court of Common Pleas issued a search warrant to enter Huntsman's property, and the Department transferred the animals off the property.**

The Department then issued an administrative transfer order for the Huntsman dangerous wild animals under R.C. 935.20. This placed the animals in the Department's temporary custody until the exhaustion of Huntsman's administrative remedies and a future order for permanent seizure of the animals by a court of competent jurisdiction.

On May 4, 2016, the Department requested Huntsman's consent to enter her premises and search for dangerous wild animals. Huntsman denied consent. The Department then immediately sought and obtained a search warrant from Judge Frank Forchione of Stark County Common Pleas Court. Search Warrant, Ex. A-4. Both the search warrant and transfer order were executed the same day. The Department moved five tigers, weighing 512 pounds, 483 pounds, 322 pounds, 285 pounds, and 276 pounds respectively; two pumas, weighing 180 pounds and 123 pounds; two baboons estimated at 45 pounds and 35 pounds; and a chimpanzee estimated at 150 pounds, into the Department's custody. Simmerman Aff. ¶ 13. All of the animals have been in the Department's legal custody since that time. The chimpanzee was immediately transported to an approved out of state facility that is well-equipped to deal with chimpanzees, and is being housed subject to further instructions from the Director. *Id.* The

remaining animals were directly transported to the Department's temporary holding facility and will be maintained according to veterinary standards of care. *Id.*

**D. The court of common pleas asserted jurisdiction and ordered the Department to return the dangerous wild animals to Huntsman by May 19.**

At about the time that the animals were being transported from Huntsman's property, Juergenson notified the Department and counsel that he intended to file a motion in Stark County Common Pleas Court to enjoin the execution of the transfer order. He said that Judge Forchione had informed him that a hearing on the motion would be held the following morning, May 5, 2016, at 8:30 a.m.

Hunstman, through counsel, did not file any complaint or affidavit, but filed only a motion for temporary restraining order. He did not serve the motion on the Department's counsel, but in light of Judge Forchione's instructions, counsel appeared at the appointed time with Dr. Melissa Simmerman of the Department's Division of Animal Health. Judge Forchione proceeded to hear argument from counsel and accepted unsworn testimony from Huntsman at the motion hearing. A transcript of the hearing ("Hearing Tr.") is attached to the Complaint as Exhibit A-7.

The Department's counsel respectfully urged the court that it lacked subject-matter jurisdiction to grant relief because only the Director was authorized to issue the administrative transfer order and the statute limited review to the agency's administrative process. Counsel cited this Court's rulings in *Kazmaier Supermarket, Inc. v. Toledo Edison Company*, 61 Ohio St. 3d 147 (1991) and *State ex rel. Taft-O'Connor '98*, 83 Ohio St. 3d 487 (1998). Counsel also contested Huntsman's right to any injunctive relief under Ohio Civil Rule 65 and attempted to answer all of the court's concerns regarding the issuance of the search warrant the previous day. Hearing Tr. at 29-75.

Over the Department's objection, the court announced from the bench that it found that the Department lacked probable cause for the search warrant issued the day before and that he was granting Huntsman a temporary restraining order requiring the return of the animals to her. Dr. Simmerman stated that further sedation of the animals within a period of two weeks would risk injury to the animals, and that additional time may be necessary pending lab results and blood work on the transferred animals. The court responded that it would order the return to be completed within two weeks, on May 19, 2016, and that he would convene a preliminary injunction hearing on the same date. Later in the day on May 5, 2016, the court granted a temporary restraining order and made certain findings of fact on the basis of the morning's hearing. Ex. A-8. However, the Order does not discuss the search warrant "probable cause" issues discussed from the bench that morning. *Id.*

The Department obtained the hearing transcript on Tuesday, May 10, and filed this prohibition case the same day.

### **ARGUMENT**

The common pleas court has no jurisdiction in the underlying case, as Ohio law does not allow courts to interfere with the Director's statutory power to protect Ohioans, on a temporary emergency basis, from dangerous wild animals. Courts may review such actions and right any wrongs *after* the administrative process, but they cannot short-circuit the process and order dangerous wild animals to be released to an unlicensed owner, at risk to the community, with no oversight of safety or the conditions in which the animals are kept.

Ohio law gives the *Director* authority to issue a transfer order directing the Department to transport dangerous wild animals to a state-approved facility. R.C. 935.20(A). If a party disagrees with that decision, she may request an administrative adjudication under R.C. Chapter 119. R.C. 935.20(D). Like any Chapter 119 proceeding, this case reaches the judiciary only

after the administrative process. Here, the court should have played only a collateral role by issuing the requested search warrant. The search warrant is used to verify a violation of the statute. R.C. 935.19. It is not used to authorize seizure or transfer of the animals—that decision is within the Department’s sole authority and reviewable only through the administrative process. Accordingly, the court had no jurisdiction to bypass the chapter 119 administrative process or to issue injunctive relief returning the animals to Huntsman.

This warrants prohibition, as the State meets all of the elements required for such a writ. This Court grants prohibition where: (1) a trial court has undoubtedly exercised judicial power; and (2) the court’s lack of jurisdiction is patent and unambiguous, and (3) the relator has no adequate remedy at law. *See State ex rel. Ohio Dep’t of Mental Health v. Nadel*, 98 Ohio St. 3d 405, 2003-Ohio-1632 ¶ 19. Moreover, the Court does not require a relator to show “no adequate remedy at law” when the lack of jurisdiction is plain in a special-statutory-proceedings case. *See Albright*, 60 Ohio St. 3d at 43 (“To permit intervening respondent to go forward with its action in the respondent court would allow it to intrude into this statutory process. Accordingly, we find that . . . the adequacy of appeal as a remedy is irrelevant.”). Further, where a lower court’s lack of jurisdiction is “patent and unambiguous,” the Court will undo past acts by a trial court as well as prevent future ones. *Nadel*, 2003-Ohio-1632 ¶ 19 (citing *State ex rel. Sartini v. Yost*, 96 Ohio St. 3d 37, 2002-Ohio-3317, ¶ 24). Here, all three elements are satisfied, so even if the third is required, it is met.

**A. The common pleas court is indisputably exercising jurisdiction.**

The common pleas court is exercising judicial power and intends to continue doing so. It opened a new case when Huntsman filed her motion. The Department explained at the May 4 hearing that the court lacks jurisdiction. Hearing Tr. at 76, 79-83. Rejecting that argument, the court issued a temporary restraining order requiring the Department to return Huntsman’s ten

dangerous wild animals within two weeks. Ex. A-8. It also set a May 19 hearing date for a preliminary injunction. To date, the common pleas court has given no indication that it recognizes any limitations on its authority to issue injunctive relief, despite the ongoing administrative process.

**B. The imminent release of these animals--tigers, pumas, baboons, and a chimpanzee--jeopardizes public safety, so the Department has no other adequate remedy at law.**

The Zanesville tragedy demonstrates that immediately returning these animals creates a significant and immediate public safety risk that cannot be remedied by a later appeal down the line. The court has ordered that Huntsman's dangerous wild animals be returned by May 19. So, while the Department need not show a lack of adequate remedy at law, it certainly has none here.

This is not just a dispute over where paperwork is handled; this is real-world danger. No one claims that these animals are anything but dangerous and wild. The tigers weigh between 276 and 512 pounds, and the pumas weigh in well over 100 pounds as well. That these animals have remained in Huntsman's control as long as they have testifies to how hard the Department has worked to accommodate her. After her application for professional membership in the Zoological Association of America was denied, however, the law is straightforward. The Department made a calculated decision that the risk to the public is too great to allow her to maintain these animals during the course of the investigation, so it issued the transfer order.

The law is so straightforward that the Director need not show any safety issue at this stage, but nevertheless, the safety issue is a strong concern now. The problem is that the Department has no way to know whether these animals will be properly secured on Huntsman's property. The statute includes comprehensive animal housing regulations to ensure public safety. These include the type, strength, and height of fencing. *See, e.g.*, Ohio Adm.Code 901:1-4-01.1(D), (K). For example, for one or two tigers, the primary enclosures are required to be at

least six hundred square feet and twelve feet high with a cantilever. Ohio Adm.Code 901:1-4-05(B). They require a double containment structure so that an animal who escapes from the internal enclosure is still contained by a secondary enclosure. Ohio Adm.Code 901:1-4-01.1(C). They require a dig barrier and safety entrance. *Id.* Non-injurious enrichment opportunities must be provided to ensure the animals' physical stimulation and psychological needs are met, not only for the animals' health but also to reduce the likelihood of escape. Ohio Adm.Code 901:1-4-01.1(I).

But because Huntsman has not applied for a permit, the Department has had no chance to assess these safety measures at her property. Nor can the Department rely on a third party, since Huntsman's application for accreditation was denied. Maybe she follows each and every one of these requirements and more. Maybe she does not. Under the statute, the Department is required to investigate and assess these risks. Here, the Director determined that it was best to issue the transfer order and seize the animals while administrative proceedings—and permitting proceedings should Huntsman choose to apply—go forward.

Aside from the obvious risks that arise from these dangerous and wild animals, the Department has every reason not to trust Huntsman. She has repeatedly disregarded the laws that are designed to protect against these obvious safety concerns. She has repeatedly refused to submit a permit application for the animals. Compl. ¶ 7. Her application for membership in the Zoological Association of America was denied. Compl. ¶ 32. She has repeatedly underreported what dangerous wild animals are on the property on no less than six occasions. Simmerman Aff. ¶ 16. For example, she shipped two leopards to Texas in 2014, but her prior report to the Department said she only had one leopard. *Id.* She turned over four alligators to the Department in September 2015, even though her prior report listed only two. *Id.* And she continues to breed

a variety of dangerous wild animals even though she has no permit to do so, in direct violation of the law. She also has repeatedly transported dangerous wild animals across state lines, also in direct violation of state law, and likely federal law as well. *Id.* Her assurances are not only inadequate for the Department, but also inadequate for the safety of the public.

Thus, the first and third elements are met, and the sole question is whether the trial court's lack of jurisdiction is "patent and unambiguous." It is.

**C. When the General Assembly commits a question to an agency's administrative process, the courts have no jurisdiction to bypass that process by issuing injunctive relief.**

This Court has repeatedly explained that common pleas courts have no jurisdiction to hear declaratory and injunctive actions that seek to bypass a statutory-created administrative agency process. *Wilkinson*, 2003-Ohio-2506, ¶¶ 15-16; *Taft-O'Connor '98*, 83 Ohio St. 3d at 489; *Albright*, 60 Ohio St. 3d at 42 ("actions for . . . [an] injunction are generally considered to be inappropriate where, as here, special statutory proceedings would be bypassed"). The General Assembly's specific commitment of an issue to a special statutory proceeding prevails, and "courts have no jurisdiction to hear" actions for declaratory judgment. *Id.*

So when the General Assembly enacts "a complete and comprehensive scheme governing" a particular arena, those issues must be resolved through the administrative agency process. *Kazmaier Supermarket v. Toledo Edison Company*, 61 Ohio St.3d 147, 573 N.E.2d 655 (1991). Thus, *Kazmaier* held that the Public Utilities Commission had exclusive jurisdiction over utility rate and service cases. *Id.* at 154. Similarly, in *Taft-O'Connor*, the Ohio Elections Commission had exclusive jurisdiction over claims of fraudulent and false statements for the same reasons. 83 Ohio St.3d at 489.

Parties cannot bypass such an administrative agency process, or the administrative appeal process that follows, by filing for declarative or injunctive relief. Indeed, this lack of jurisdiction

is so well-settled that most lower courts routinely enforce it by refusing to hear cases that violate the rule, so that this Court does not need to step in and enforce the limit. For example, when a doctor tried to bypass the Medical Board and have a common pleas court examine a professional-discipline matter, the trial court declined to exercise jurisdiction, and the Tenth District affirmed. *State ex re. Gelesh v. State Med. Bd. of Ohio*, 10th Dist. Franklin, 2007-Ohio-3328. Other courts have done likewise. *Aust v. Ohio State Dental Bd.*, 136 Ohio App. 3d 677 (10th Dist. 2000) (declaratory judgment is not available where another equally serviceable remedy has been provided); *Tri-State Grp., Inc. v. Ohio Edison Co.*, 151 Ohio App. 3d 1, 2002-Ohio-7297 (7th Dist.) (operator of fly ash disposal site could not use declaratory judgment to circumvent regulatory schemes governing fly ash disposal); *Dayton Street Transit Co. v. Dayton Power & Light Co.*, 57 Ohio App. 299 (2d Dist. 1937) (common pleas court does not have jurisdiction to entertain an action for a declaratory judgment on questions in which the Public Utilities Commission has exclusive jurisdiction). And this Court has affirmed that principle on direct review as well as by prohibition. See *City of Galion v. Am. Fed'n of State Cnty. & Mun. Emps., Local No. 2243*, 71 Ohio St. 3d 620, 623 (1995) (“We have held that if there is a special statutory procedure which a party must use, an action for declaratory judgment is inappropriate.”).

**D. The General Assembly vested the Department with exclusive jurisdiction to issue an order transferring dangerous animals into state-approved facilities during a pending investigation, and made the agency’s administrative process and appeal the sole avenue for review.**

Here, the General Assembly has committed the oversight of dangerous wild animals to a special statutory process, leaving no room for a competing court action. The Dangerous Wild Animals Act tasks the Department of Agriculture with implementing and enforcing a comprehensive statutory scheme to ensure public safety and animal health. The Act creates a

detailed permitting process, lists many requirements that must be met before a permit is issued, and requires owners to demonstrate continued compliance with specific standards governing permitting requirements. As explained above, this case concerns only a part of that broader scheme, but it is a critical part: protecting the public while the process unfolds.

Before, during, and after the permit application process, the Department is responsible for investigating possible violations of the statute and enforcing its provisions. For obvious reasons that Zanesville highlighted, the Department's investigatory powers are broad. As part of that broad investigatory authority, the Department often must take immediate action. If it finds a likely violation, it has two immediate options to ensure public safety and animal health while the investigation—and any administrative proceedings—continue. It can order that the dangerous wild animals be quarantined, such that no animals may enter or exit the premises without the Department's knowledge and permission. R.C. 935.20(A). Or it may issue a transfer order, requiring that the animals be removed and placed in a state-approved facility. *Id.* These orders assure public safety and animal health while the investigation continues. Here the Director first issued a quarantine, but after learning that Huntsman's professional membership application was denied, chose to issue a transfer order requiring these animals to be seized and placed in a state-approved facility.

If Huntsman disagrees with that judgment, the Act provides her with the opportunity to challenge the orders through the administrative hearing process. The owner of the dangerous wild animals is entitled to a copy of the administrative order authorizing the quarantine or transfer, the reasons for it, its terms and conditions, and a notice that the owner is entitled to request a hearing to review. R.C. 935.20(C)-(D). Upon request within thirty days after the quarantine or transfer order is issued, the dangerous wild animal order may request an

adjudication in accordance with R.C. Chapter 119. And after that, she may appeal the transfer order to the Franklin County Court of Common Pleas. R.C. 119.12(B).

She cannot, however, seek to bypass the statute by seeking immediate injunctive relief in state court. The reasons for this are simple. The General Assembly has declared that the “broad and complete control” of dangerous wild animals “shall be within the administrative agency. *Kazmaier*, 61 Ohio St.3d at 150-51. The *Director* determines whether dangerous animals must be temporarily placed in state custody during an investigation. R.C. 935.20(A). The common pleas court has no jurisdiction to review that statutory authorization.

The point of establishing a comprehensive scheme is to ensure that particular decisions are made *by* the agency, which has subject-matter expertise. Undercutting the agency’s authority through collateral judicial actions undermines the efficacy of the act itself. The court’s unauthorized exercise of jurisdiction here brings this abstract principle into vivid and frightening focus. Rather than relying on the agency’s expertise, the common pleas court’s order does exactly the opposite. It releases dangerous tigers and other animals to an owner who has no permit.

The court’s unauthorized exercise of jurisdiction also bypasses the Act’s administrative process. By issuing injunctive relief, the common pleas court made optional the administrative process that the General Assembly made mandatory. *See Taft-O’Connor*, 83 Ohio St.3d at 489. This too, has practical consequences. Not only did the common pleas court act without the information and expertise that is at the Department’s disposal, it also issued injunctive relief without the benefit of an administrative hearing, or the record such a hearing could provide. This again means poorly-informed decision making in an area where Zanesville demonstrates that such mistakes can be deadly.

Finally, bypassing the agency's administrative process creates more work for the judiciary. No limiting principle allows *this* common pleas court judge to bypass that process in this case without likewise allowing others to do the same in future cases. That would undoubtedly shift significant fact-finding and decision-making from government agencies to the judiciary, which, in turn, would tax judicial resources. Most important, it improperly supplants the General Assembly's policy decisions with a different view.

Nothing in the Dangerous Wild Animals Act authorizes a court of common pleas to interfere with the agency's administrative process. The common pleas court originally got involved in this case because, at the Department's request, it issued a search warrant under R.C. 935.19(A)(2). It is only statutorily authorized to play that collateral role. This is evident from the statute's structure. The search warrant is used to verify a violation of the statute. R.C. 935.19(A). It is not used to authorize seizure or transfer of the animals—*that* decision is within the Department's sole authority and reviewable only through the administrative process. Here, the Director had reason to believe Huntsman was in violation of the statute—by not having a permit. He knew that with or without the search warrant. Accordingly, the court had no jurisdiction to bypass the Chapter 119 administrative process or to issue injunctive relief returning the animals to Huntsman.

**E. Huntsman's arguments for exemption from R.C. Chapter 935 are irrelevant and wrong.**

In prior correspondence with the Department and in the litigation pending in Stark County Common Pleas Court, Huntsman advanced a couple theories about why she does not need a permit.

These theories are irrelevant to this prohibition case. The Department's transfer order did not in any way affect Huntsman's ownership interest or constitute a permanent seizure of the

animals. R.C. 935.20(H). That comes later. The animals were seized only so the administrative process can continue with the animals in a secure facility. Huntsman can still assert her various legal arguments during the Chapter 119 proceeding, and, if she wishes, a subsequent appeal in Franklin County.

Her arguments for exemption, while irrelevant here, are also wrong. Huntsman has advanced two different theories. First, Huntsman asserts that she is exempt on the basis of a permit issued by the Ohio Department of Natural Resources under R.C. 1533.08 for a bald eagle in her possession. Second, Huntsman claims that she is also exempt because she is allegedly pursuing membership with the Zoological Association of America.

Huntsman's first argument, based on her Natural Resources permit, is facially invalid. The permit states that it covers only a bald eagle; it can do so because bald eagles are native Ohio species and are not dangerous wild animals under R.C. 935.01. It cannot establish an exemption under R.C. 935.03(B)(10) to allow her to cover whatever dangerous wild animals she wants to own. Moreover, her argument defies common sense. The General Assembly, in saying that a Natural Resources permit means an owner does not also need an Agriculture Department permit, plainly meant that the *same animal* is covered. It surely did not intend that a bald eagle permit gives blanket approval for the eagle owner to hold an entire zoo of animals, such as Huntsman's menagerie of tigers, pumas, chimpanzee, baboons, and other dangerous wild animals. Huntsman's second argument, that she is seeking accreditation by the Zoological Association of American, is likewise meritless on its face. R.C. 935.02(B)(1) exempts a facility that *has obtained* accredited membership status with that Association, but Huntsman admits that she is not a member, and in fact has been denied such membership.

But again, none of the merits of her claims matter, as all that matters now is that this issue is to be resolved in an administrative process, not the lower court. And most important now, these deadly animals should not be released while the legal process continues. The Court should act now to protect the public.

### CONCLUSION

For the above reasons, the State asks the Court to issue a Peremptory Writ of Prohibition and/or an Alternate Writ of Prohibition directing the trial court to dissolve his temporary restraining order and dismiss the case of *In re: Cynthia Huntsman Transfer of Dangerous Wild Animals*, Case No. 2016-MI-138 .

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General

/s/ Eric E. Murphy

ERIC E. MURPHY\* (0083284)  
State Solicitor

*\*Counsel of Record*

PETER T. REED (0089948)  
Deputy Solicitor

JAMES R. PATTERSON (0024538)

LYDIA M. ARKO (0085597)

Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980; 614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

Counsel for Relator

Director, Ohio Department of Agriculture

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Motion For Peremptory or Alternative Writ Of Prohibition And Combined Memorandum In Support Of Relator's Complaint And In Support Of Emergency Motion was sent by regular U.S. mail and electronic mail, this 11th day of May, 2016, to the following:

John D. Ferrero  
Stark County Prosecutor  
Stark County Prosecutor's Office  
Stark County Office Building  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702  
JdFerrero@starkcountyohio.gov

The Hon. Frank G. Forchione  
Stark County Court of Common Pleas  
115 Central Plaza North, Suite 400  
Canton, Ohio 44702  
JudgeForchione@starkcountyohio.gov

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

John Juergensen  
6545 Market Avenue North  
Canton, Ohio 44721  
jlj@juergensenlaw.com

/s Eric E. Murphy  
ERIC E. MURPHY  
State Solicitor