

**IN THE SUPREME COURT OF OHIO**

JOHN DOE 1, <i>et al.</i> ,	)	CASE NO. 2024-0056
	)	
<i>Appellees,</i>	)	
	)	
vs.	)	On Appeal from the
	)	Delaware County Court of Appeals
CITY OF COLUMBUS, OHIO, <i>et al.</i> ,	)	Fifth Appellate District
	)	Case No. 23CAE040028
<i>Appellants.</i>	)	

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**REPLY BRIEF OF *AMICUS CURIAE*  
THE VILLAGE OF SCIO, OHIO  
IN SUPPORT OF APPELLANTS**

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**REPLY BRIEF OF *AMICUS CURIAE***  
**THE VILLAGE OF SCIO, OHIO**  
**IN SUPPORT OF APPELLANTS**

**Interest of the Amicus Curiae**

The propositions of law under consideration in this case are directly related to propositions of law raised by the amicus in *Ronald J. Myers, Co-Trustee, etc., et al. v. The Village of Scio, Ohio, et al.*, Ohio Supreme Court Case No. 2024-0911. In the *Scio* case, the amicus – a municipality and political subdivision of the state of Ohio – has been enjoined from exercising its lawful authority under the Home Rule and Utilities Clauses of the Ohio Constitution. Because the authority of the Village is well-established, through decades of Ohio Supreme Court jurisprudence supporting the power of a municipality to control and condition the extraterritorial sale of surplus water and sewer services, the amicus maintains that the injunction should be immediately appealable.

**Appellants’ Proposition of Law No. I:**

The Government May, Under R.C. 2505.02(B)(4), Immediately Appeal Orders Preliminarily Enjoining its Laws.

As reenforced by Ohio Attorney General Dave Yost, in the reply brief of the Attorney General, “the State and its municipalities may still appeal provisional remedies (such as preliminary injunctions) if they ‘would not be afforded a meaningful or effective remedy’ absent immediate appeal.” (Reply Brief of Amicus Ohio Attorney General, Aug. 16, 2024, p. 3). The amicus Village joins the Attorney General in the proposition that the “State and its municipalities suffer when their laws are improperly enjoined.” (*Id.*, pp. 3-4).

The Village is entitled to exercise its lawful municipal power as expressed in the Ohio Constitution. That power includes Home Rule authority, under Art. XVIII, Ohio Constitution, Sec.

3, and Utility Power under Art. XVIII, Ohio Constitution, Sec. 4, 6. Scio has passed an Ordinance which regulates the extraterritorial sale and delivery of the Village's surplus utility services. In part, the Ordinance requires new and existing customers who benefit from the Village's extraterritorial public water service and/or sanitary sewer service to consent to annexation of all real property at which the utility service is "connected, delivered, received, used, and/or otherwise consumed, directly or indirectly." The validity of annexation conditions is long settled by the Court. *Bakies v. City of Perrysburg*, 108 Ohio St. 3d 361, 2006-Ohio-1190, affirming, *Bakies v. Perrysburg*, 2004-Ohio-5231 (6th Dist.); *Clark v. Greene Cty. Combined Health Dist.*, 108 Ohio St. 3d 427, 2006-Ohio-1326; *Fairway Manor, Inc. v. Board of Commissioners of Summit County*, 36 Ohio St. 3d 85 (1988); *State ex rel. Indian Hill Acres, Inc. v. Kellogg*, 149 Ohio St. 461 (1948). The orders of the Common Pleas Court in the *Scio* case, which have substantially interfered with the Village's exercise of clearly-established Constitutional power, should be immediately reviewable.

"[A]ny time a State is enjoined from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303, 133 S.Ct. 1, 3 (2012) (Roberts, C.J., in chambers), quoting *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). See also, *Abbott v. Perez*, 585 U.S. 579, 603 n. 17 (2018) (The "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State."). Logically, these same principles apply to restrictions placed on the lawful exercise of municipal power. The trial court's injunction, precluding the Village from enforcing its Ordinance and extraterritorial utility annexation condition, coupled with its denial of a motion to dismiss asserting the absence of justiciable claims in light of clearly-established municipal power under long-standing precedent, irreparably interferes with the Village's authority to regulate its local

utility operations. The Village, like the City of Columbus, should not be forced to suffer undue delay, expense and prejudice in the vindication of its lawful authority when an interlocutory appeal under these circumstances would function as the prompt means to restore the Village's power. See also, *Priorities USA v. Nessel*, 860 Fed. Appx. 419, 422-423, 2021 U.S. App. LEXIS 21677, \*4-5, 2021 FED App. 0351N (6th Cir.), citing *Maryland v. King*, *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, supra; “[T]he public interest lies in a correct application” of the law and “upon the will of the people of Michigan being effected in accordance with Michigan law;” *Tennessee v. Cardona*, 2024 U.S. Dist. LEXIS 106559, \*122, \_\_\_ F.Supp.3d \_\_\_; “States have compelling interests in enforcing their own laws, particularly with respect to matters like education, which have traditionally been reserved to the states. See *Tennessee v. United States Dep’t. of Education*, 615 F. Supp. 3d 807, 840-41 (2022) (citing *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020)). See also *Abbott v. Perez*, 585 U.S. 579 n.17, 138 S. Ct. 2305, 201 L. Ed. 2d 714 (2018) (observing that ‘the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State’).”

**Appellants’ Proposition of Law No. II:**

An Order Enjoining Enforcement of a Statute or Ordinance Causes Irreparable Harm to the Sovereign Interests of the Government, and is Immediately Appealable

The Village’s power is, in part, derived from the Home Rule Amendment, Art. XVIII, Ohio Constitution, Sec. 3. The amicus enjoys “full and complete political power in all matters of local self government.” *Village of Newburgh Heights v. State*, 168 Ohio St. 3d 513, 2022-Ohio-1642, ¶24. The Constitution secures “sovereignty over matters of local government.” *Id.*, ¶25. This authority, coupled with the express Utility Powers granted in the Ohio Constitution, fully supports the power of the Village to enact and enforce its Ordinance, including the extraterritorial utility service



annexation condition. As well-stated by appellants in this case, the “only way to redress governmental injury when an injunction is issued against a legally passed law is to allow an immediate appeal.” (*Doe*, Memo. Jan. 1, 2024, p. 9). Scio maintains this is particularly true when the order enjoins the exercise of municipal power stated directly in the Ohio Constitution and repeatedly confirmed and reinforced by judicial precedent, as implicated in *Scio*.

The trial court orders in the *Scio* case directly affect a substantial right; namely, the right of the Village, through its elected representatives, to regulate the extraterritorial sale of surplus utility services. A substantial right is one fixed by “the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure . . . .” R.C. 2505.02(A)(1). The orders clearly “affect” a substantial right, particularly the right of the Village to condition the sale of its extraterritorial utility services on consent to annexation, under the Home Rule Amendment and Utility Clause of the Ohio Constitution. Those orders, made in a special proceeding (a declaratory judgment action) are subject to immediate appeal. R.C. 2505.02(B)(2). A declaratory judgment action is, as a matter of law, a special proceeding. See, *Gen. Acc. Ins. Co. v. Ins. Co. of North America*, 44 Ohio St. 3d 17, 22 (1989); *Hrabak v. Walder*, 2019-Ohio-4732, ¶17 (11<sup>th</sup> Dist.).

### **CONCLUSION**

**WHEREFORE**, amicus curiae, The Village of Scio, Ohio, respectfully requests that the Court adopt the appellants’ propositions of law.

Respectfully submitted,

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