

IN THE SUPREME COURT OF OHIO

STATE EX REL.	:
PAVAN V. PARIKH,	: Case No. 2024-1466
HAMILTON COUNTY CLERK OF COURTS,	:
Appellant,	: On direct appeal from the
	: First District Court of Appeals
	:
v.	: Court of Appeals Case No. C-240187
	:
THE HONORABLE JOSH BERKOWITZ, et al.,	:
JUDGES OF THE HAMILTON COUNTY	:
MUNICIPAL COURT,	:
	:
Appellees.	:

**BRIEF BY AMICUS CURIAE OHIO CLERK OF COURTS ASSOCIATION
IN SUPPORT OF APPELLANT
HAMILTON COUNTY CLERK OF COURTS PAVAN V. PARIKH**

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INTRODUCTION

This case boils down to a single question: can an independently elected clerk of courts be controlled by the preferences of the court's judges via issuance of administrative orders? This Court must say no to that question. Otherwise, there is no point to the General Assembly statutorily authorizing the position of clerk of courts and having that clerk independently elected.

The judges of the Hamilton County Municipal Court (this Brief will refer to the judges collectively as the "Municipal Court Judges") issued an administrative directive to withdraw a policy that Hamilton County Clerk of Courts Pavan V. Parikh implemented in running the clerk's office and required Mr. Parikh to make certain records accessible on *the clerk's* website. The Hamilton County Clerk has—voluntarily—long made records accessible via remote access (online). Mr. Parikh continued that tradition; but also made the decision to remove a small number of records from the clerk's website while still making all records available in the clerk's office. It is simply the Municipal Court Judges' preference that Mr. Parikh put particular records on the clerk's website.

The issue this case presents is to what extent can the Municipal Court Judges—or, any judge across the State, for that matter—issue administrative directives to dictate how Mr. Parikh—or any other independently elected clerk of courts—must run his office. The access to certain records on the clerk's website is the specific issue here; but the point is much larger than that. If a court's judges are allowed to order their independently elected clerk of courts to run the clerk's website in a particular way, what are the bounds of this seemingly unlimited administrative authority? May the judges direct the clerk to purchase a particular type of paper; or require that everyone in the clerk's office use only gel pens over ballpoint pens? At some point, the clerk becomes a hollowed out, shadow of an elected official—elected by the people for show but having no real authority of his or her own. Ohio law requiring certain courts to have an independently

elected clerk would be entirely pointless if the clerk is just a puppet of the court, bound to simply carry out the judges' administrative orders.

Either the position of independently elected and statutorily authorized clerk of courts is an “office separate and distinct” from the judges and court it serves, or it isn't. *See State ex rel. Ware v. Kurt*, 2022-Ohio-1627, ¶ 53 (Kennedy, C.J., concurring in part and dissenting in part); *see also State ex rel. Andrews v. Lake Cty. Court of Common Pleas*, 2022-Ohio-4189, ¶ 30 (“As an elected official, a clerk of courts occupies a public office distinct from the court and its judges.”). It is entirely inconsistent with Ohio law to find the clerk of courts merely exists to serve the whims of the court's judges. That is, however, the practical effect of the lower court's opinion.

The clerk of courts must have the ability to run the office as he or she deems appropriate so long as it is consistent with the authority laid out in the Revised Code. If not, the General Assembly's grant of powers to an independently elected public office has no force; and the voters that elected each clerk of courts have no voice.

The Ohio Clerk of Courts Association respectfully requests that the decision of the First District Court of Appeals be reversed.

STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio Clerk of Courts Association (the “Clerks Association” or the “OCCA”) is a professional organization that was created in 1940 to advance the goal of assisting the independently elected clerks of courts throughout the State of Ohio in the performance of their official duties and to exercise influence in legislation and other public matters that affect county clerks. The members of the Clerks Association are the 88 clerks of courts that have been elected (or in the case of Cuyahoga County, appointed by the County Executive) for four-year terms to carry out the statutory duties set forth in the Ohio Revised Code. The OCCA is currently led by its President, Deborah A. Myers, the Ashland County Clerk of Courts.

The office of the clerk of courts traces its origins from the ancient position of cleric who maintained the records, was responsible for correspondence, and had powers to issue writs ordered by the court. The cleric was one of the most educated and trusted persons in the community. The 1802 Ohio Constitution that created Ohio's judicial system originally provided for the appointment of a clerk of courts by the judges of the court of common pleas. The 1851 Ohio Constitution, however, made the clerk of courts an independently elected officer with a three-year term of office. *See* Ohio Constitution, Article IV, Section 16 (1851). Although Article IV, Section 16 was repealed in 1933, the General Assembly adopted and incorporated the clerk of courts position as an independently elected countywide office in R.C. Chapter 2303, and established the term at four years. *See* R.C. 2303.01.

The General Assembly likewise created a clerk of courts position for Ohio's municipal courts, with six-year terms of office. R.C. 1901.31. In counties with over 100,000 residents, the municipal clerks of courts are elected; in counties with less than 100,000 people, the clerks of courts are appointed by the municipal court judges. *See* R.C. 1901.31(A)(1)(a), (A)(2)(a). At least ten jurisdictions have dual-elected clerks of court—meaning that the clerk of courts for the common pleas court also serves as the clerk of courts for the municipal court (as is the case for Mr. Parikh). *See* R.C. 1901.31.

As an independently elected officer, the clerk of courts plays a vital role in the operation of Ohio's judicial system by ensuring that all official records of judicial proceedings are properly filed, docketed, indexed, and preserved for all civil, domestic relations, and criminal cases. Clerks are also responsible for administering oaths, taking affidavits, and issuing executions of judgments rendered in court; issuing, signing, and attaching the seal of the court to all papers from the court; and, receiving, collecting, and issuing receipts for all costs, fees, fines, and bail paid to the office

or the court. *See, e.g.*, R.C. 1901.31(E) and (F). County clerks have even more non-court-related duties, such as issuing titles for vehicles and watercraft. *See, e.g.*, R.C. 1544.13, R.C. 1548.02, and R.C. 4505.02. Clerks of courts for each county also serve as the clerk of courts for each court of appeals, and have an independent obligation to ensure that the court of appeals receive a complete and accurate record of each case that is subject to appeal. R.C. 2303.03.

The Ohio Clerk of Courts Association submits this Brief because it has a strong and compelling interest—as do its members—in ensuring any decision issued by this Court does not unduly restrict or limit the ability of each clerk of courts in all 88 counties to perform their official duties in a manner that complies with the Ohio Constitution and the Ohio Revised Code. It is of paramount importance that this Court recognize, preserve, and protect the independence of the clerks of courts. The irony of asking a bench of Justices to issue a decision reigning in the actions of other judges is not lost on the OCCA. But the law *must* be upheld, and it’s critical that the Court finally determine the proper relationship and balance between the authority of municipal court judges and the clerks of courts to ensure the lawful and efficient function of Ohio’s judicial system.

STATEMENT OF THE CASE AND FACTS

The Clerks Association adopts the Statement of the Case and Facts set forth in the merit brief of Appellant Pavan V. Parikh.

LAW AND ARGUMENT

The crux of this case is what kind of power municipal court judges can assert over a clerk of courts who serves the voters who elected him, the office he sits in, and the court he supports. The First District Court of Appeals determined that the Municipal Court Judges have the statutory authority to dictate, via administrative order, what records must be made available on *the clerk’s* website, and to hold Mr. Parikh in contempt for failing to make his (entirely voluntary) online records database conform to the Municipal Court Judges’ wishes.

The Clerks Association disagrees with that decision for three reasons. First, the lower court's decision fails to acknowledge that the offices that Mr. Parikh and the Municipal Court Judges hold are all creatures of statute—meaning that Mr. Parikh and the Municipal Court Judges can only act within the mandatory and discretionary powers conferred upon them by the General Assembly. There is no statutory law empowering the Municipal Court Judges to compel Mr. Parikh to make certain records available on the clerk's website in only the way that the Municipal Court Judges want. Second, the practical and policy effects of the First District's decision are troubling. To what end can judges control how and what the clerks of courts do on a daily basis in exercising the clerk's power and duties? Third, the First District's basis for upholding the Municipal Court Judges' administrative order is that the Rules of Superintendence require court records to be publicly accessible. There is no disagreement that the public generally has the right to access court records; but the Rules of Superintendence *do not require* a clerk of courts to make all records remotely accessible via an online database. This Court should overrule the First District's decision.

I. There is no explicit statutory authority empowering a municipal court to dictate the precise manner in which the clerk of courts performs the clerk's statutorily assigned duties.

Both municipal clerks of courts and municipal courts (and their judges) only possess the authority expressly vested in them by the Revised Code. Any action taken by a municipal clerk of courts or a municipal court judge must be firmly grounded in the mandatory or discretionary powers granted by the General Assembly to each office in R.C. Chapter 1901. Where a particular duty is assigned by statute to the clerk, there is no legal basis for the court to issue an order mandating the exact way in which the clerk performs the task. The clerk of courts has sole discretion to control the way in which the clerk's duties are carried out as a procedural matter, as long as the clerk is performing his or her official duties in accordance with the law. To hold that

the court can unilaterally control every minute aspect of the clerk’s job functions would greatly hinder the efficiency of the clerk’s operations, and impermissibly expand the scope of the court’s powers far beyond those granted by statute.

A. The clerk of courts has sole discretion to determine the manner in which judicial records are maintained and made publicly available.

The clerk of courts may be an “arm of the court,” but the clerk’s office is recognized as an independent public office within the judicial system. *State ex rel. McKean v. Graves*, 91 Ohio St. 23, 24 (1914); *see also State ex rel. Andrews v. Lake Cty. Court of Common Pleas*, 2022-Ohio-4189, ¶ 30 (“As an elected official, a clerk of courts occupies a public office distinct from the court and its judges.”); *State ex rel. Ware v. Kurt*, 2022-Ohio-1627, ¶ 15 (stating the clerk of courts “is an office separate and distinct from that of judge of the common pleas court”); *State v. Leibold*, 2013-Ohio-1371, ¶ 45 (2d Dist.); *State ex rel. Smith v. Culliver*, 2010-Ohio-339, ¶ 43 (5th Dist.).

Both clerks of courts and the courts themselves (run by their judges) are creatures of statute, and each has separate, defined duties within the court system. *See Ware* at ¶ 53 (Kennedy, C.J., concurring in part and dissenting in part); *see also State ex rel. Finley v. Miller*, 128 Ohio St. 442, 443 (1934); *State v. McCoy*, 95 Ohio App. 165, 166 (4th Dist.1953) (“The Municipal Court is a creature of statute, and, therefore, has only such powers as are conferred by the Legislature.”). The clerks of courts and the judges “run separate offices, and neither has supervisory authority over the other.” *In re Disqualification of Warren*, 2006-Ohio-1388, ¶ 6. This, too, serves as a check-and-balance: a judge not having control over how judicial records are managed and kept, and the clerk of courts not impugning control over court or judicial administration.¹ *Id.*

¹ Another check-and-balance between judges and clerks is that clerks of courts are, essentially, a member of the executive branch and supervised as such. That is, clerks of courts do not have to be lawyers, clerks of courts submit their financial disclosure statements to the Ohio Ethics Commission (not this Court), and clerks of courts are not subject to the Ohio Code of Judicial Conduct (including election, campaigning, and fundraising limitations).

The municipal clerk’s statutorily assigned mandatory duties include preparing and maintaining a general index, docket, and other records of the court, R.C. 1901.31(E); receiving, collecting, and issuing receipts for all costs, fees, fines, bail, and other monies paid to the court, R.C. 1901.31(F); and recording the proceedings of the court, R.C. 1901.31(E). The clerk’s duties also include discretionary ones—for example, appointing deputy clerks, R.C. 1901.31(H); administering oaths and taking affidavits, R.C. 1901.31(E); and approving all bonds, sureties, and undertakings fixed by a judge, R.C. 1901.31(E). Where the court may exercise any control with respect to any of the clerk’s specific duties, the Revised Code expressly says so. For example, a common pleas court has certain authority to direct the use of funds derived from the county clerk’s collection of court-related fees. *See, e.g.*, R.C. 2303.201.

Notably absent from R.C. Chapter 1901 is a provision empowering the court to direct *how* the clerk of courts must prepare, docket, and maintain judicial records. Nor is there any statute allowing the court to prescribe a specific procedure the clerk must follow to make judicial records available for public inspection. To find that the court may nonetheless impose its preferences on the clerk when it comes to how the clerk performs these statutorily assigned job functions would read judicial authority into the law where the General Assembly intentionally chose to leave it out.

B. The Municipal Court Judges have no statutory authority to direct Mr. Parikh in the performance of his mandatory job functions, and judicial administrative orders are not intended to be a “loophole” in the law to expand the scope of the Court’s authority.

Just like the clerk of courts, the municipal court may only exercise powers expressly granted to it by the General Assembly. *Finley* at 443. If there is no clear statutory authority for the court to take a particular action, it simply can’t do it. *See Welty v. Casper*, 2014-Ohio-2903, ¶ 11 (10th Dist.) (“But a juvenile court is a creature of statute and, therefore, has only such powers as are conferred upon it by the legislature. Thus, it has little, if any, inherent power.”); *see also*

State v. Human, 56 Ohio Misc. 5, 8 (C.P. 1978). A municipal court has “little, if any” inherent authority to dictate by fiat. *Welty* at ¶ 11; *see also Human* at 8.

The Clerks Association recognizes that municipal courts have the ability to delegate certain duties to the clerk of courts under R.C. 1901.31(E): “The clerk shall do all of the following: . . . perform all *other* duties that the judges of the court may prescribe.” The plain language of this provision is important. Municipal court judges may only assign duties to the clerk of courts *in addition to* those duties expressly assigned to the clerk in the Revised Code. R.C. 1901.31 does not state the court may dictate how the clerk performs its statutorily assigned duties.

The closest legal basis for the Municipal Court Judges to infringe upon Mr. Parikh’s maintenance of judicial records is R.C. 1901.14(A)(3), which imbues the court with the power to “adopt, publish, and revise rules relating to the administration of the court.” But even this statute doesn’t clearly state the court may require Mr. Parikh to make court records publicly available via an online database that he voluntarily operates as a means to carry out the clerk’s official duties. How Mr. Parikh operates *his website* has no relation to the administration of *the court*.

The Municipal Court Judges were not statutorily authorized to issue an administrative order outside the scope of administering the court. The order operates as an impermissible means to circumvent the well-defined limits of the Revised Code. The General Assembly intentionally delegated certain official duties to the courts and others to the clerk of courts. There is no wiggle room in the law for the Municipal Court Judges to intrude upon Mr. Parikh’s unilateral job functions. R.C. 1901.31(E) requires the clerk of courts to keep, maintain, and make publicly available judicial records. Mr. Parikh has sole discretion to determine how best to perform that function.

II. Public policy strongly weighs against affirmance of the First District's decision.

The Municipal Court Judges' administrative order is problematic for a variety of practical reasons, too. If the Court holds the Municipal Court Judges may direct Mr. Parikh's policies related to performance of one of the clerk's most essential, mandatory, and primary duties—maintaining judicial records—where exactly does the court's control over the clerk stop? The court would be given carte blanche to preside over all of the clerk's operations. Years of Ohio law delineating the clerk's position as a public office separate and distinct from the court would instantly be rendered meaningless. The clerk's office is a sham if the clerk has no actual power or discretion with respect to his or her official duties. The General Assembly surely could have never foreseen or intended that the clerk would be nothing more than a glorified administrative assistant to the court.

This scenario is especially troubling in the context of a clerk of courts who is elected by the people to serve the people—as is the case with Mr. Parikh and over a hundred other clerks of courts across the State. It is a colossal waste of time and resources to hold an election for a municipal clerk of courts if the position has absolutely no authority within the court system. This cannot be the outcome the General Assembly contemplated when meticulously crafting statutes calling for the election of certain municipal clerks of courts and designating the clerk as the appropriate official to oversee a very specific list of duties. Voters elect these individuals as the county or municipal clerk of courts for a reason. The people trust these men and women to dutifully fulfill the statutory obligations and implement thoughtful policies and procedures in the interests of public welfare and efficiency of clerk's office operations. By overruling a clerk's internal policies and commanding him or her to perform official duties in a certain manner, the judges have not only gutted the clerk's authority but also negated the will of the people.

The General Assembly created a separation-of-powers model when it provided that most

clerks of court would be independently elected. One check in that model? The clerks of courts do not just serve the single court for their jurisdiction; they also serve as the clerk of courts for the court of appeals in that given county. See R.C. 2303.03; R.C. 2501.16. One could imagine a scenario where one set of judges issues an administrative order that requires the clerk to do one thing; and another set of judges issues an administrative order that requires the clerk to do the opposite. How is the clerk of courts expected to solve that Hobson's choice? Especially when the consequence of not complying is a charge of contempt of court (or, even, dereliction of duty). A independently elected clerk of courts must be able to remain independent and not be subject to the whims of the judges on the court.

The lower court's decision, if allowed to stand, also raises a question as it relates to funding initiatives, policy, and conduct dictated by the judges. In general, the funding for both county and municipal court clerks of courts is set by the legislative authority—either the county commissioners or the municipality's council—in which the clerk has jurisdiction.² But what happens if judges issue an administrative order that forces the clerk of courts to expend monies to implement the order (or otherwise be held in contempt)? Who is on the hook for these costs? Not the court or its judges. It's the clerk of courts, who has a finite budget set by a separate legislative body.

The Municipal Court Judges don't just purport to control Mr. Parikh; they posit that they may *punish* Mr. Parikh if he declines to follow their administrative order, by holding him in contempt of court. A party may be held in contempt of court for “conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court

² There are some limited exceptions to this that allow the courts and the clerks to redirect certain fees into a special fund to be utilized for certain projects. See, e.g., R.C. 2303.201 (authorizing fees to be collected and used for computerization and digitization of court).

in the performance of its functions.” *Denovcheck v. Trumbull Cty. Bd. of Commrs.*, 36 Ohio St.3d 14, 15 (1988), quoting *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55 (1971), paragraph one of the syllabus. Mr. Parikh’s conduct in this case? He created an internal policy limiting the time period in which certain judicial records would be accessible on the Clerk of Courts website (and, again, there is no requirement *any* municipal court records be made publicly available online). It is unfathomable that any reasonable, objective third party decision-maker would find Mr. Parikh’s conduct to be contempt-eligible. But that’s of no concern to the Municipal Court Judges. Because they are in the incredibly unique position of being the judges presiding over any contempt proceedings with respect to their administrative order. Mr. Parikh stands no chance of receiving a fair, impartial hearing on the matter.

The Court’s decision in this matter has significant statewide implications, too. Ohio’s 88 counties have 88 different common pleas courts and 88 different county clerks of courts. There are more than 120 municipal courts and more than 120 municipal clerks of courts. If the Municipal Court Judges’ administrative order is allowed to stand, what’s to stop other Ohio judges from issuing administrative orders directing other clerks of courts how to run the clerks’ offices. And where does the court’s administrative power end? Is it with how the clerk’s website is run? Perhaps it ends with what hours the clerk’s office must be open? Or maybe it ends with what size paperclips are used to assemble court filings? The trivialness of these examples is exactly the point: the clerk of courts must be able to run their office as dictated by Ohio law.

The Municipal Court Judges have usurped the Hamilton County Municipal Clerk of Courts office and backed Mr. Parikh into a corner by making themselves complainant, judge, jury, and executioner in this matter. Affirming the Municipal Court Judges’ administrative order would mean the clerk’s office has no real authority or autonomy in the court system. It would render the

clerk a mere puppet of the court. The Municipal Court Judges cannot be permitted to effectively judicially abolish a legislatively created public office by running the clerk's office via administrative order.

III. This is not a restricting-access-to-court-records case governed by the Rules of Superintendence.

The First District's decision below relies, in large part, on its perception that Mr. Parikh attempted to commandeer the court's power under the Rules of Superintendence. The court of appeals stated that the issue in this case stems from Mr. Parikh's attempt to "exercise a judicial function *en masse* specifically conferred to the [Municipal Court] Judges, without having the power or right to do so" *State ex rel. Pavan V. Parikh v. The Honorable Josh Berkowitz*, 2024-Ohio-4686, ¶ 41. According to the lower court, Mr. Parikh's policy of making only *some* records available via remote, electronic access was a decision that only the Municipal Court Judges could make. There are a few critical errors in the First District's decision.

First, the plain language of the Rules of Superintendence allows Mr. Parikh to do exactly what he did. The Rules provide that a court *or* clerk *shall* make court records available by direct access—meaning that the copies must be available for inspection at the clerk's office during regular business hours. *See* Sup.R. 45(B)(1); Sup.R. 44(J). A court *or* clerk *may* make those same court records available by remote access—meaning the same exact records can be (but are not required to be) available for electronic viewing. *See* Sup.R. 45(C)(1); Sup.R. 44(K). Mr. Parikh's policy, which was superseded by the Municipal Court Judges in this case, inarguably complies with these Rules. Contrary to the First District's decision, Mr. Parikh did not *restrict* access, in any way, to any case document in derogation of Rule of Superintendence 45(E). Pursuant to Mr. Parikh's records management policy, nearly all court records remain accessible via remote access (again, not a requirement under the Revised Code or the Rules of Superintendence), and every

single court record remains accessible by the public via direct access at the Clerk's office (in complete compliance with the Revised Code and Rules of Superintendence).

Second, the lower court's restricting-public-access analysis creates a new standard for all clerks of courts across the State: if you choose to ever exercise a discretionary action, you're prohibited from ever stopping that discretionary action in the future. That certainly isn't what the Rules of Superintendence contemplate (it definitely isn't what they say). And it creates a dangerous precedent. *See, e.g., Ohio Democratic Party v. Husted*, 834 F.3d 620, 635 (6th Cir.2016) (declining to impose a "one-way ratchet" to require "any expansion of voting rights [to] remain on the books forever"). If the First District's opinion is allowed to stand, any clerk of courts that decides to make certain records available via remote access can *never* decide to remove those records from remote access lest it be in violation of Ohio law. If judges issue an administrative order prohibiting removing certain records from remote access, what happens when a technological or human error occurs, and sensitive or confidential information is included in a document posted for remote access? Is the clerk of courts in contempt of the court's administrative order for removing that document from remote access? That simply isn't what the Revised Code or the Rules of Superintendence require.

Third, the Rules of Superintendence allow the clerk *or* the court to make certain records available via remote access. Sup.R. 45(C)(1). The Municipal Court Judges, then, could elect to provide remote access to court records on their own initiative (which they haven't done, despite ordering Mr. Parikh to do so). But the Rules of Superintendence do not authorize the Municipal Court Judges to require the *clerk* to provide remote access to court records via *the clerk's* website. The Municipal Court Judges may not convert a discretionary action available to Mr. Parikh into a mandatory action, subject to contempt of court for failure to comply.

CONCLUSION

Amicus curiae the Ohio Clerk of Courts Association respectfully requests that this Court reverse the decision of the First District Court of Appeals.

Respectfully submitted,

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