

**IN THE SUPREME COURT OF OHIO**

HIGHLAND TAVERN, LLC, <i>et al.</i>	)	Case No.
	)	
Plaintiffs-Appellants,	)	On Appeal from the Franklin
	)	County Court of Appeals
vs.	)	Tenth Appellate District
	)	
MICHAEL DEWINE,	)	Court of Appeals
Governor of the State of Ohio, <i>et al.</i>	)	Case No. 21AP-176
	)	
Defendants-Appellees.	)	

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**MEMORANDUM IN SUPPORT OF JURISDICTION  
OF PLAINTIFFS-APPELLANTS HIGHLAND TAVERN, LLC  
AND HIGHLAND SQUARE TAVERN, LLC**

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**TABLE OF CONTENTS**

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....	1
STATEMENT OF THE CASE AND FACTS .....	3
ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW.....	7
<u>Proposition of Law I</u> : Ohio Administrative Code section 4301:1-1-80, “Rule 80,” is unconstitutional as it violated the separation of powers doctrine implicitly embedded in the Ohio Constitution.....	7
<u>Proposition of Law II</u> : An administrative appeal challenging the application of an administrative rule does not divest a court of common pleas of jurisdiction over a separate constitutional challenge to the facial validity of the administrative rule. ....	9
CONCLUSION.....	13
CERTIFICATE OF SERVICE .....	14
APPENDIX	<u>Appx. Page</u>
Opinion of the Franklin County Court of Appeals (Nov. 16, 2021).....	A-1
Judgment Entry of the Franklin County Court of Appeals (Nov. 16, 2021).....	A-10

**TABLE OF AUTHORITIES**

**Cases**

*American Life & Accident Ins. Co. v. Jones* (1949), 152 Ohio St. 287,  
89 N.E.2d 301 .....10

*Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93,  
296 N.E.2d 261 .....10

*Clinton v. New York* (1998), 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 .....7

*City of S. Euclid v. Jemison*, 28 Ohio St.3d 157, 503 N.E.2d 136 (1986) .....3, 7, 9

*Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263, 328 N.E.2d 395 .....10

*Evans v. State*, 872 A.2d 539 (De. 2005).....7

*Gannon v. Perk*, 46 Ohio St.2d 301, 348 N.E.2d 342 (1976).....9

*Herrick v. Kosydar* (1975), 44 Ohio St.2d, 339 N.E.2d 626 .....10

*Highland Tavern, LLC, v. Ohio Liquor Control Comm.,*  
Franklin C.P. No. 20CV006447 (Jan. 29, 2021).....3, 5, 6

*Ohio Council 8, Am. Fedn. of State, Cty. & Mun. Emp., AFL-CIO v. Cincinnati,*  
69 Ohio St.3d 677, 635 N.E.2d 361 (1994) .....7

*Radaszewski v. Keating* (1943), 141 Ohio St. 489, 49 N.E.2d 167 .....10

*Schaefer v. First National Bank of Findlay* (1938), 134 Ohio St. 511,  
18 N.E.2d 263 .....10

*State ex rel. Albright v. Delaware Cty. Court of Common Pleas,*  
60 Ohio St.3d 40, 572 N.E.2d 1387 (1991) .....10

*State ex rel. Atty. Gen. v. Harmon*, 31 Ohio St. 250 (1877) .....7

*State ex rel. Bryant, v. Akron Metro. Park Dist.* (1929), 120 Ohio St. 464,  
166 N.E. 407 .....7

*State ex rel. CannAscend Ohio LLC v. Williams,*  
10th Dist. Franklin No. 18AP-820, 2020-Ohio-359 .....12

*State ex rel. Curry v. Indus. Commission*, 58 Ohio St.2d 268,  
389 N.E.2d 1126 (1979).....7, 9

<i>State ex rel. Dir., Ohio Dept. of Agriculture v. Forchione</i> , 148 Ohio St.3d 105, 2016-Ohio-3049, 69 N.E.3d 636.....	10, 12
<i>State ex rel. Ohio Academy of Trial Lawyers v. Sheward</i> , 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999).....	8, 11
<i>State ex rel. Socotch v. Bryant</i> , 158 Ohio St. 249, 108 N.E.2d 737 (1952).....	8
<i>State, ex rel. Taft v. Franklin Cty. Court of Common Pleas</i> , 63 Ohio St.3d 190, 586 N.E.2d 114 (1992).....	11
<i>State ex rel. Taft–O'Connor '98 v. Franklin Cty. Court. of Common Pleas</i> , 83 Ohio St.3d 487, 700 N.E.2d 1232 (1998) .....	10
<i>State ex rel. Wilkinson v. Reed</i> , 99 Ohio St.3d 106, 2003-Ohio-2506, 789 N.E.2d 203 .....	10
<i>State v. Bodyke</i> , 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753.....	7
<b><i>Constitutional Provisions, Statutes, Rules, and Other Authorities</i></b>	
Ohio Constitution, Article II, Section 1 .....	7
R.C. Chapter 4303.....	4, 8, 9, 13
Ohio Adm.Code 4301:1-1-80 .....	<i>passim</i>
Am.Sub.H.B. No. 110.....	1
Baron de Montesquieu, <i>The Spirit of the Laws</i> (Thomas Nugent trans., 1949).....	7

**EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES  
A SUBSTANTIAL CONSTITUTIONAL QUESTION**

Since the onset of the SARS-CoV-2 pandemic the people of the United States of America and the State of Ohio have experienced a secondary crisis of executive overreach. Ohio businesses have faced officials claiming competence in areas outside of their authority and power. While some may have acquiesced to precautionary measures taken between March and May of 2020, many of those measures arguably violated the Constitutional rights of Americans and Ohioans, and many measures implemented after May of 2020 have been nothing short of constitutional assaults.

Executive and administrative orders, rules, recommendations, and guidelines have been so numerous and ever-changing that the rule subject to this appeal has likely been forgotten by many Ohio citizens. It has not been forgotten, however, by those left jobless and with businesses destroyed.

“Rule 80” instituted by the Ohio Liquor Control Commission at the Governor’s request, which outlawed the sale of alcohol for on-premises consumption after 10 p.m., is so obviously a violation of the separation of powers doctrine implicit in the Ohio Constitution that neither Appellees nor the lower courts dared attempt reconciling the Rule with the provisions of the Ohio Revised Code authorizing Appellants to serve alcohol after 1 a.m.

Though Rule 80 is no longer in effect, the harm remains. Under Rule 80 any bar could serve alcohol all day, but not between 10 p.m. and 2:30 a.m. The justification was that those are hours people become intoxicated, and less inhibited, and thus less likely to take precautions such as masking and social distancing. It is not only the citizens of the State of Ohio that saw the absurdity of Rule 80. The Ohio House of Representative included provisions in Am.Sub.H.B.

No. 110 that would return liquor permits and overturn sanctions imposed upon those hurt by SARS-CoV-2 restrictions including Rule 80. The Governor line item vetoed those provisions. Thus, Rule 80s expiration did not end the harm, and even the insistence of the House could not overcome the Governor's will.

Ohio citizens deserve better. At minimum they deserve to know the laws under which they earn their living will not one day be overruled at the Governor's whim. They deserve to know the separation of powers will be upheld in this State. History repeats itself. If the harms caused by Rule 80 remain undisturbed then nothing stands in the way of similar action in the future.

Nobody can prove whether Rule 80 saved anybody's life, but it destroyed livelihoods. The loss of freedom and democracy is more dangerous than SARS-CoV-2. To avoid the erosion of freedoms enjoyed by Ohio's citizens and the erosion of the structure of the State Government, this Court should accept jurisdiction.

Further, this Court should accept jurisdiction to clarify and uphold prior rulings of this Court stating that declaratory judgment actions may be maintained independently of other actions including administrative appeals, which the appellate court's ruling implicitly overturns. The appellate court ruled that the trial court lacked subject matter jurisdiction over this action because of a separate administrative appeal regarding the same injury. This ignores the fact that Appellants could have sued with or without the separate administrative appeal. The appellate court's ruling avoided the ultimate issue in this case and should be overturned to prevent weakening the Declaratory Judgment Act.

## STATEMENT OF THE CASE AND FACTS

This case presents a facial challenge to the constitutionality of Ohio Adm.Code 4301:1-1-80 (“Rule 80”) as it violates the separation of powers doctrine in the Ohio Constitution, recognized in *City of S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158–59, 503 N.E.2d 136, 138 (1986). The appellate court ruled the trial court was without jurisdiction to decide the constitutional issue because of the separate administrative appeal. See Appx. A-6. The trial court dismissed the Complaint due to the then-ongoing administrative appeal. See R. 58 at 3-4, citing *Highland Tavern, LLC, v. Ohio Liquor Control Comm.*, Franklin C.P. No. 20CV006447 (Jan. 29, 2021). Prior to the trial court’s ruling, Judge Frye, presiding over the administrative appeal, denied consolidation with this case stating that this case “seeks to invalidate Rule 80 on its face, whereas Highland Tavern argued in the administrative appeal that the Commission’s revocation was only unconstitutional as applied.” *Id.* To date, no court has entertained the constitutional issues presented by this case.

Highland Square Tavern, LLC owned and operated a bar in Akron, Ohio called the “Highland Tavern.” R. 8 at ¶ 5. Highland Square Tavern, LLC purchased Highland Tavern, LLC’s assets, including its liquor permit, and sold alcohol per a management pending approval of the permit transfer. *Id.* Highland Tavern held a “D-3a” liquor permit, among others, as defined in R.C. § 4303.16, and was licensed under the laws of the State of Ohio to sell beer, wine, and liquor for on-premises consumption until 2:30 a.m. *Id.* at ¶ 2. Highland Tavern operated under its liquor permit for eight years and, before the institution of Rule 80, was never cited for any violation that would affect its liquor permit. *Id.* at ¶ 35.

On May 21, 2020, Highland Tavern reopened after a forced closure due to the state of emergency declared by the Governor. R. 8 at ¶ 25. On July 30, 2020, the Governor asked the

Ohio Liquor Control Commission (“OLCC”) to adopt a new administrative rule mandating a 10:00 p.m. curfew on alcohol sales at liquor permit establishments in Ohio. Id. at ¶ 17. On July 31, 2020, the OLCC passed Rule 80 in an emergency meeting. Id. at ¶ 18. On July 31, 2020, the Governor signed Executive Order 2020-30D, which suspended the procedures prescribed by R.C. § 119.03 regarding the adoption of new rules promulgated by the OLCC, and immediately adopted the curfew. Id. at ¶ 21.

After reopening, but before the institution of Rule 80, Highland Tavern was twice inspected by Summit County Department of Health officials. R. 8 at ¶ 27. Highland Tavern passed the first inspection without issue and had a spacing violation that was immediately corrected on the second inspection. Id. Within eight days of the adoption of Rule 80, however, Highland Tavern received two citations for Rule 80 violations – one on August 6, 2020 and another on August 8, 2020. Id. at ¶ 30. Highland Tavern received a third citation on August 22, 2020. Id.

Ohio Investigative Unit (“OIU”) officers, tasked with enforcing the curfew, acted aggressively to enforce Rule 80. R. 8 at ¶ 30. On one occasion an OIU officer forcibly moved behind the bar to restrain a Highland Tavern employee from serving alcohol, ignoring social distancing recommendations. Id.

On September 11, 2020, the OLCC ordered Highland Tavern’s liquor permit revoked at the close of business on October 2, 2020. R. 8 at ¶ 31. At close of business, on October 2, 2020, the Highland Tavern ceased serving alcohol and closed its business due to the revocation of its liquor permit. Id. at ¶ 33. It has yet to reopen.

Rule 80 stopped on-premises consumption of alcohol after 10:00 p.m., in direct contravention of R.C. § 4303.16 at the least, which provides, “If the holder of a D-3a permit is

also the holder of a D-1 permit, the holder may sell beer after one a.m. [...]” and “If the holder of a D-3a permit is also the holder of a D-2 permit, the holder may sell intoxicating liquor after one a.m. [...]” R. 8 at ¶¶ 59, 60. Highland Tavern operated under permits D-1, D-2, D-3, D-3a, and D-6. Id. at ¶ 46.

Rule 80 expired on November 29, 2020, but its effects did not. The OLCC continued to prosecute violations of Rule 80 after its expiration date. See OLCC publication, “COVID-19 Cases Heard December 1-4, 2020” at: <https://lcc.ohio.gov/News/PressReleasesCOVID-19Cases.aspx> (last accessed January 3, 2022).

Highland Tavern and its employees lost their livelihood because of Appellees’ actions. R. 8 at ¶ 38. Highland Tavern employed six bartenders, four of whom are single mothers whose sole source of income was from Highland Tavern. Id. at ¶ 36. Due to the revocation of the Highland Tavern’s liquor permit, Highland Tavern initially suffered over \$40,000 in lost sales in the ensuing month and continues to suffer injury. Id. at ¶ 38.

Appellants filed the Complaint on November 25, 2020. R. 8. On November 30, 2020, Appellees moved to consolidate this case with an earlier-filed administrative appeal. See R. 37. Appellees filed a substantially similar motion in front of Judge Frye in the administrative appeal. See *Highland Tavern, LLC, v. Ohio Liquor Control Comm.*, Franklin C.P. No. 20CV006447 (December 14, 2020).

On January 29, 2021, Judge Frye denied Defendants’ motion to consolidate, stating:

Highland Tavern and the Commission are parties in both actions; both actions involve the constitutionality of Rule 80. However, the similarities between the lawsuits end there.

[...]

In the motion, the Commission, Commissioners, and Governor argue that “each case stems from common questions of law and fact: whether Highland Tavern, LLC’s liquor license should have been revoked by the Ohio Liquor Control Commission.” (Pl. Motion, filed Dec. 14, 2020, p. 1) True, each case is an attempt

by Highland Tavern to restore its liquor license. But the declaratory judgment sought in the case before Judge Phipps is much broader than that. It seeks to invalidate Rule 80 on its face, whereas Highland Tavern argued in the administrative appeal that the Commission's revocation was only unconstitutional as applied. For all these reasons, the motion to consolidate is **DENIED**. *Highland Tavern, LLC, v. Ohio Liquor Control Comm.*, Franklin C.P. No. 20CV006447 (Jan. 29, 2021) (emphasis in original).

Appellants ask the Court to take judicial notice of this decision as it was not available when opposing Appellees' motion to dismiss at the trial court. Appellants note this decision was utilized in arguing the issues raised herein to the appellate court.

Appellees moved to dismiss the Complaint on January 4, 2021. R. 55. Plaintiffs opposed on January 19, 2021, and Defendants replied one week later. R. 56; 57. The trial court dismissed Plaintiffs' Complaint on March 31, 2021. R. 58. The trial court stated, "any declaratory judgment in its favor would not 'terminate the uncertainty or controversy' as it would not resolve whether Highland Tavern's liquor permit was properly revoked." *Id.* at 9-10. This does not match the prayer in the Complaint, however, as Appellants demanded a declaration that Rule 80 is facially unconstitutional, not unconstitutional "as applied." R. 8 at ¶ 65. The trial court erred in ignoring the Complaint and dismissing the Complaint as an attempt to bypass a special statutory proceeding.

On November 16, 2021, the appellate court upheld the trial court's decision, declaring "if the subject of appellants' declaratory judgment action is a matter related to its pending administrative proceeding, the declaratory judgment action is an improper attempt to bypass the statutory proceedings, and the trial court lacks jurisdiction to hear the case." Appx. A-6.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law I: Ohio Administrative Code section 4301:1-1-80, “Rule 80,” is unconstitutional as it violated the separation of powers doctrine implicitly embedded in the Ohio Constitution.**

Ohio Constitution, Article II, Section 1 states, “The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives [...]” “While Ohio, unlike other jurisdictions, does not have a constitutional provision specifying the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government. *City of S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158–59, 503 N.E.2d 136, 138 (1986), citing *State ex rel. Atty. Gen. v. Harmon*, 31 Ohio St. 250 (1877); *State ex rel. Bryant, v. Akron Metro. Park Dist.* (1929), 120 Ohio St. 464, 166 N.E. 407.

In *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, this Court observed:

Montesquieu warned, “[w]hen the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be then no liberty \* \* \*. [And] there is no liberty, if the power of judging be not separated from the legislative and executive powers.” *Evans v. State*, 872 A.2d at 544, quoting Baron de Montesquieu, *The Spirit of the Laws* (Thomas Nugent trans., 1949), fn. 39. See also *Clinton v. New York* (1998), 524 U.S. 417, 450, 118 S.Ct. 2091, 141 L.Ed.2d 393 (the separation-of-powers doctrine guards against the threat to liberty posed by the concentration of power in a single branch of government).

*State v. Bodyke*, supra, at ¶ 47.

It is axiomatic that “[r]ules promulgated by administrative agencies are valid and enforceable unless unreasonable or in conflict with statutory enactments covering the same subject matter.” *State ex rel. Curry v. Indus. Commission*, 58 Ohio St.2d 268, 269, 389 N.E.2d 1126, 1128 (1979); see also *Ohio Council 8, Am. Fedn. of State, Cty. & Mun. Emp., AFL-CIO v. Cincinnati*, 69 Ohio St.3d 677, 680, 635 N.E.2d 361, 363 (1994), holding a rule promulgated by

an agency issued pursuant to statutory authority, has the force and effect of law unless it is unreasonable or is in clear conflict with statutory enactment governing the same subject matter; *State ex rel. Socotch v. Bryant*, 158 Ohio St. 249, 108 N.E.2d 737, 738 (1952), holding “the Board of Liquor Control cannot adopt any rule which is inconsistent with any statutory provision contained in the Liquor Control Act.”

The power and duty of the judiciary to determine the constitutionality and, therefore, the validity of the acts of the other branches of government have been firmly established as an essential feature of the Ohio system of separation of powers. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 462, 715 N.E.2d 1062, 1076 (1999). If the executive branch of Ohio’s government freely impedes upon the territory of the legislature, and if the courts decline to review the executive’s actions, then the separation of powers doctrine in this State is illusory, and the judiciary and legislature have ceded all power to the executive.

R.C. 4303.16, “D-3a permit,” states:

Permit D-3a may be issued to the holder of a D-3 permit whenever the holder’s place of business is operated after one a.m. and spirituous liquor is sold or consumed after that hour. The holder of such permit may sell spirituous liquor during the same hours as the holders of D-5 permits under this chapter and Chapter 4301. of the Revised Code or the rules of the liquor control commission. The fee for a D-3a permit is nine hundred thirty-eight dollars in addition to the fee required for a D-3 permit.

If the holder of a D-3a permit is also the holder of a D-1 permit, the holder may sell beer after one a.m. and during the same hours as the holder of a D-5 permit. If the holder of a D-3a permit is also the holder of a D-2 permit, the holder may sell intoxicating liquor after one a.m. and during the same hours as the holder of a D-5 permit. The holder of a D-3a permit may furnish music and entertainment to the holder's patrons, subject to the same rules as govern D-5 permit holders.

R.C. 4303.18, “D-5 permit,” states:

Permit D-5 may be issued to the owner or operator of a retail food establishment or a food service operation licensed pursuant to Chapter 3717. of the Revised Code that operates as a restaurant or night club for purposes of this chapter, to sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, and to sell the same products in the same

manner and amounts not for consumption on the premises as may be sold by holders of D-1 and D-2 permits. A person who is the holder of both a D-3 and D-3a permit need not obtain a D-5 permit. The fee for this permit is two thousand three hundred forty-four dollars.

Ohio Adm.Code 4301:1-1-80 (“Rule 80”), states:

A. Notwithstanding any provision contained in rule 4301:1-1-49 of the Administrative Code to the contrary, no permit holder shall:

1. Sell beer, wine, mixed beverages, or spirituous liquor for on-premises consumption Monday to Sunday between the hours of 10:00 p.m. and 5:30 a.m.; or
2. Allow consumption of beer, wine, mixed beverages, or spirituous liquor on the premises Monday to Sunday between the hours of 11:00 p.m. and 5:30 a.m.

Appellants operated under permits D-1, D-2, D-3, D-3a, and D-6, and thus were statutorily permitted to sell alcohol for on-premises consumption “after one a.m.” and until 2:30 a.m. R.C. 4303.16; 4303.18; R. 8 at ¶¶ 44, 46. Rule 80 limited sales for on-premises consumption to 10 p.m., and thus is in “conflict with statutory enactments covering the same subject matter.” *State ex rel. Curry v. Indus. Commission*, 58 Ohio St.2d 268, 269, 389 N.E.2d 1126, 1128 (1979). For that reason, Rule 80 is invalid and unenforceable. *Id.* Rule 80 violates the separation of powers doctrine “implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *City of S. Euclid v. Jemison*, 28 Ohio St.3d 157, 158–59, 503 N.E.2d 136, 138 (1986).

This Court should accept jurisdiction of this issue as it is a substantial and important constitutional question and a case of public or great general interest.

**Proposition of Law II: An administrative appeal challenging the application of an administrative rule does not divest a court of common pleas of jurisdiction over a separate constitutional challenge to the facial validity of the administrative rule.**

This Court has repeatedly held that the availability of alternative remedies does not divest a court of jurisdiction to hear an action for declaratory judgment. See *Gannon v. Perk*, 46 Ohio St.2d 301, 307, 348 N.E.2d 342, 346–47 (1976), explaining:

In *Schaefer v. First National Bank of Findlay* (1938), 134 Ohio St. 511, 18 N.E.2d 263, the Court, in paragraphs three and four of the syllabus, stated:

An action for a declaratory judgment may be alternative to other remedies in those cases in which the court, in the exercise of sound discretion, finds that the action is within the spirit of the Uniform Declaratory Judgments Act and a real controversy between adverse parties exists which is justiciable in character and speedy relief is necessary to the preservation of rights that may be otherwise impaired or lost.

While a granting of a declaratory judgment is within the sound discretion of the court, the jurisdiction to grant such a judgment is not limited by the terms of the statutes to those cases in which no remedy is available either at law or in equity.

See, also, *Herrick v. Kosydar* (1975), 44 Ohio St.2d, 128, 339 N.E.2d 626; *Driscoll v. Austintown Associates* (1975), 42 Ohio St.2d 263, 328 N.E.2d 395; *Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 296 N.E.2d 261; *American Life & Accident Ins. Co. v. Jones* (1949), 152 Ohio St. 287, 89 N.E.2d 301, and *Radaszewski v. Keating* (1943), 141 Ohio St. 489, 49 N.E.2d 167.

This Court has noticed a lack of jurisdiction where a case attempts to “bypass special statutory proceedings by agencies that have exclusive jurisdiction over a particular subject matter.” *State ex rel. Dir., Ohio Dept. of Agriculture v. Forchione*, 148 Ohio St.3d 105, 2016-Ohio-3049, 69 N.E.3d 636, ¶ 22, citing *State ex rel. Albright v. Delaware Cty. Court of Common Pleas*, 60 Ohio St.3d 40, 42, 572 N.E.2d 1387 (1991) (exclusive jurisdiction to consider annexation matters is in county in which hearing on annexation petition takes place); *State ex rel. Taft–O’Connor ‘98 v. Franklin Cty. Court. of Common Pleas*, 83 Ohio St.3d 487, 488–489, 700 N.E.2d 1232 (1998) (complaints regarding election-law violations must be filed with the Ohio Elections Commission); *State ex rel. Wilkinson v. Reed*, 99 Ohio St.3d 106, 2003-Ohio-2506, 789 N.E.2d 203, ¶ 16, 18, 21 (unfair-labor-practices actions are the exclusive jurisdiction of the State Employment Relations Board). The common denominator of these cases, however, is the exclusive jurisdiction of an agency over a particular subject matter. Appellants argued repeatedly that the OLCC does not have jurisdiction to determine the constitutional validity of its own rules, and because of that there is no way that this case can be committed to a special statutory

proceeding. For the same reason this case is not one that attempted to bypass a special statutory proceeding. The administrative appeal is irrelevant to this case.

This Court dispensed with a similar contention in *State, ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 63 Ohio St.3d 190, 195, 586 N.E.2d 114, 118 (1992), where the Court held the trial court “had authority to hear a declaratory judgment action concerning [a political action committee’s] rights under R.C. 3599.03” because neither the Ohio Elections Commission nor the Ohio Secretary of State “ha[d] exclusive authority over alleged violations of R.C. 3599.03.” The same is true here. The OLCC does not have exclusive authority, nor any authority, to determine the constitutionality of its own rules. The authority to determine the constitutionality of administrative rules is exclusively within the power of the judiciary. See *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 462, 715 N.E.2d 1062, 1076 (1999).

The court of appeals, however, now holds that courts lack subject matter jurisdiction over a facial constitutional challenge which bears any factual similarity to a separate administrative appeal challenging the application of the rule. Under the appellate court’s decision, those negatively affected by an administrative rule have the choice of challenging the constitutionality of the rule on its face or as applied via administrative appeal; complainants cannot challenge both as the existence of the administrative appeal negates the facial challenge since the facial challenge is now an attempt to bypass the administrative appeal. If a complainant brings a facial challenge only, however, the administrative agency can successfully argue the facial challenge without an administrative appeal is an attempt to bypass the special statutory proceeding. Thus, the appellate court’s ruling effectively eliminates the ability to bring a facial constitutional challenge to an administrative rule. This is **DANGEROUS**.

In so ruling, the appellate court relied upon *State ex rel. CannAscend Ohio LLC v. Williams*, 10th Dist. Franklin No. 18AP-820, 2020-Ohio-359. In that case, the plaintiff Aphria brought an action for declaratory judgment seeking a declaration that the Ohio Department of Commerce’s decision to deny Aphria a marijuana cultivator’s license was “unreasonable, arbitrary, and/or unconscionable, constituting an abuse of discretion.” *Id.*, at ¶ 12. Importantly, Aphria “did not request an R.C. Chapter 119 hearing.” *Id.*, at ¶ 9. Thus, in *CannAscend*, the appellant literally attempted to style an administrative appeal as an action for declaratory judgment where the matter was committed to a special statutory proceeding. *CannAscend* is wholly inapplicable. Other cases relied upon by the appellate court are similar examples of complainants seeking declaratory relief where the declaration sought is a matter committed to a special statutory proceeding.

Appellants reiterate, there is no special statutory proceeding whereby the OLCC may determine the constitutionality of its own rules. Thus, the appellate court misapplied the doctrine divesting courts of jurisdiction over an action for declaratory judgment which seeks to resolve an issue committed to the exclusive jurisdiction of an administrative agency. See *State ex rel. Dir., Ohio Dept. of Agriculture v. Forchione*, 148 Ohio St.3d 105, 2016-Ohio-3049, 69 N.E.3d 636. Where this rule has been applied, the party bringing the declaratory judgment action either sought to use declaratory judgment to entirely bypass a matter committed to a special statutory proceeding or sought a second opinion from a different court in an ongoing administrative appeal. Never has the rule been applied so broadly as to prevent a facial constitutional challenge to a rule merely because a separate administrative appeal was brought which discussed the same harm giving standing to the facial constitutional challenge. It does not even matter that the administrative appeal was brought. Appellants could have brought the same challenge to Rule 80

even if the administrative appeal was not filed because Appellants have the right to a determination of the constitutionality of the Rule when alleged to be unconstitutional. The separate administrative appeal is irrelevant to this action.

This Court should accept jurisdiction over this case to prevent those harmed by unconstitutional administrative rules from losing their right to challenge administrative rules, and to prevent this state from further executive tyranny.

### CONCLUSION

Rule 80 conflicts directly with R.C. 4303.16. This violates the separation of powers doctrine in the Ohio Constitution. The judiciary has exclusive jurisdiction to determine the constitutionality of acts of the other two branches of government. This case was not committed to a special statutory proceeding because the OLCC does not have the right to determine the constitutionality of its own rules. When the executive exercises unconstitutional power that goes unchecked and unremedied, tyranny results. This court should accept jurisdiction of this case to avoid the clear danger that the rulings of the lower courts created.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Memorandum in Support of Jurisdiction of Plaintiffs-Appellants Highland Tavern, LLC and Highland Square Tavern, LLC was served via email on this 3rd day of January 2022 to:

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