

No. 19-857

IN THE
Supreme Court of the United States

GPI DISTRIBUTORS, INC.,

Petitioner,

v.

NORTHEAST OHIO REGIONAL SEWER DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF OHIO, CUYAHOGA COUNTY

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did Ohio's Eighth District Court of Appeals correctly affirm the Ohio Trial Court's dismissal of the instant action when it held that the bond requirement set forth in Ohio Rev. Code § 2505.06 did not deny Petitioner's constitutional access to the courts or violate Petitioner's right to a legal remedy, and that Petitioner had an alternative to posting a bond under Ohio Rev. Code § 2505.11 but made no effort to substitute the bond?

CORPORATE DISCLOSURE STATEMENT

Respondent Northeast Ohio Regional Sewer District (“NEORS”) is not a subsidiary or affiliate of a publicly-owned corporation. No publicly-owned corporation has a financial interest in the outcome.

STATEMENT OF RELATED CASES

GPI Distributors, Inc., No. 17-006, Northeast Ohio Regional Sewer District Board Decision. Decision entered September 12, 2017.

GPI Distributors, Inc. v. City of Cleveland, et al., No. 17-887300, Cuyahoga County, Ohio Court of Common Pleas. Judgment entered October 19, 2017.

GPI Distributors, Inc. v. City of Cleveland, et al., No. CV-17-883825, Cuyahoga County, Ohio Court of Common Pleas. Judgment entered May 30, 2018.

GPI Distributors, Inc. v. City of Cleveland, No. 106806, Court of Appeals of Ohio, Eight Appellate District. Judgment entered January 24, 2019.

GPI Distributors, Inc. v. City of Cleveland, No. 2019-0352, Supreme Court of Ohio. Entry declining jurisdiction, May 29, 2019.

GPI Distributors, Inc. v. City of Cleveland, No. 2-19-0352, Supreme Court of Ohio. Entry denying reconsideration, August 6, 2019.

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INTRODUCTION

This matter arises from the appeal of an administrative determination by the Northeast Ohio Regional Sewer District (“NEORS”) regarding GPI Distributors, Inc.’s (“GPI” or “Petitioner”) unpaid sewer bills. Petitioner requested a hearing from the NEORS, which the NEORS promptly granted. But Petitioner inexplicably sued the NEORS before it had reached a determination and then filed the instant lawsuit after the NEORS determined that the unpaid bills were in fact due and owing. While Ohio law permits appeals of administrative determinations that Petitioner could have availed itself, Petitioner failed to comply with the controlling law in the time specified to perfect such an appeal. Only after the time had expired to comply with Ohio’s bond provision set forth in Ohio Rev. Code § 2505.06 did Petitioner then claim to be indigent and challenge the law as unconstitutional. Notwithstanding Petitioner’s arguments to the contrary, Ohio’s bond requirement for administrative appeals is consistent with both Equal Protection and due process under law.

Both the Supreme Court of Ohio and this Court have reviewed financial barriers to court access and set the controlling standard. Under *Lyle Construction, Inc. v. Ohio Department of Natural Resources*, 516 N.E.2d 209, 34 Ohio St.3d 22 (Ohio 1987), and *Ortwein v. Schwab*, 410 U.S. 656, 600 (1973), the Ohio Supreme Court and this Court have considered and rejected arguments similar to those raised by Petitioner. Because this Court has repeatedly found that financial barriers to court access in civil matters are not unconstitutional, the Petition instead relies on multiple misrepresentations of the law and the record in an attempt to manufacture an issue for review.

Yet a review of the record makes clear that Petitioner was not deprived of an opportunity to appeal, there is no state court split on this matter, and Ohio's Eighth District Court of Appeals opinion did not rely on the principle of constitutional avoidance.

In fact, Petitioner had both an opportunity to be heard at an administrative hearing before the NEORS and to appeal that decision to the Cuyahoga County Court of Common Pleas. However, Petitioner did not timely post a bond in the amount set by the court under Ohio law pursuant to Ohio Rev. Code § 2505.06. Nor did Petitioner substitute the bond as permitted by Ohio Rev. Code § 2505.11.

Instead, Petitioner initially argued that the bond was not required under the statute. Petitioner waited until after the Trial Court rejected this argument, set the bond, and the time to post or substitute the bond had expired before Petitioner claimed that it could not afford the bond and challenged the constitutionality of Ohio Rev. Code § 2505.06. Petitioner's untimely arguments and failure to utilize the alternative to a bond permitted by Ohio Rev. Code § 2505.11 are the reason that its appeal was dismissed. Petitioner's claim that Ohio Rev. Code § 2505.06 unconstitutionally barred it from pursuing an appeal is meritless based on the clear and controlling precedent of this Court. Moreover, it is significant that no state court has ever held that a statute similar to Ohio Rev. Code § 2505.06 violated either due process or equal protection.

Additionally, review by this Court is not warranted because Petitioner wholly failed to seek review of the

constitutional questions presented in the Petition before the Ohio Supreme Court. Instead, Petitioner seeks a review of the arguments it presented to Ohio's Eighth District Court of Appeals – arguments which it subsequently abandoned when it requested that the Ohio Supreme Court review the case solely on other grounds. The instant Petition does not involve the appeal of a decision of a United States Court of Appeals or a decision by a state court of last resort. Nor does the decision of Ohio's Eighth District Court of Appeals affirming dismissal for failure to comply with both the Trial Court's decision setting the bond and an Ohio state statute governing the management of administrative appeals raise an important federal question that conflicts with a prior decision by this Court, a United States Court of Appeals or even another state court. Nor does it raise an important question of federal law that has not been decided by this Court.

Accordingly, this Court should deny certiorari because: Petitioner's constitutional challenge was untimely; Petitioner had an alternative to posting the bond that it did not use; the Court has already established the standard – which Petitioner does not meet – for financial barriers to access the courts; and there is neither an important question of federal law presented nor a state court “split” that would justify review.

RELEVANT STATUTES

Ohio Rev. Code Ann. § 2505.06 (West 2019) provides:

Except as provided in section 2505.12 of the Revised Code, no administrative-related appeal shall be effective as an appeal upon questions of law and fact until the final order appealed is

superseded by a bond in the amount and with the conditions provided in sections 2505.09 and 2505.14 of the Revised Code, and unless such bond is filed at the time the notice of appeal is required to be filed.

Ohio Rev. Code Ann. § 2505.11 (West 2019) provides:

A conveyance of property may be ordered by a court instead of a supersedeas bond in connection with an appeal, and, if a conveyance of property is so ordered, the conveyance may be executed and deposited with the clerk of the court in which the final order, judgment, or decree was rendered, or, in the case of an administrative-related appeal, with the clerk of the court to which the appeal is taken, to abide the judgment of the reviewing court.

In any appeal, in lieu of filing a supersedeas bond, an appellant may deposit an amount of money equal to that specified for the bond with the clerk of the appropriate court to abide the result of the appeal and the conditions specified by the court.

Ohio Rev. Code Ann. § 2505.11 (West 2019) provides:

Upon the declaration of the court of common pleas organizing the regional water and sewer district pursuant to section 6119.04 of the Revised Code and upon the qualifying of its board of trustees and the election of a president and a secretary, said district shall exercise in its own name all the rights, powers, and duties

vested in it by Chapter 6119. of the Revised Code, and, subject to such reservations, limitations and qualifications as are set forth in this chapter, such district may:

...

(W)(1) Charge, alter, and collect rentals and other charges for the use of services of any water resource project as provided in section 6119.09 of the Revised Code. Such district may refuse the services of any of its projects if any of such rentals or other charges, including penalties for late payment, are not paid by the user thereof, and, if such rentals or other charges are not paid when due and upon certification of nonpayment to the county auditor, such rentals or other charges constitute a lien upon the property so served, shall be placed by the auditor upon the real property tax list and duplicate, and shall be collected in the same manner as other taxes.

RESTATEMENT OF THE CASE

A. Factual Background

On October 15, 2016, pursuant to Ohio Rev. Code § 6119.06(W)(1), the NEORSD certified delinquent sewer charges in the amount of \$12,047.76 to the tax duplicate for 5335 Dolloff Road, Cleveland, Ohio 44127 (the “Property”), which is owned by Petitioner. While Petitioner was notified of the NEORSD’s plans to certify the delinquent amounts prior to certification, it took no action until it requested a hearing in 2017. The NEORSD held the requested hearing on July 12, 2017.

B. Procedural History

1. *GPI I*

On July 12, 2017 – before the NEORSD had rendered a decision on the administrative hearing – Petitioner filed Case No. CV-17-883825 in the Cuyahoga County Common Pleas Court (hereinafter “*GPI I*”). Petitioner named as defendants the NEORSD, the City of Cleveland, and individual officers of the NEORSD and the City of Cleveland. *GPI I* sought declaratory judgment, challenged the 2016 certification as unconstitutional, and argued that the liens certified for delinquent water and sewer bills violated due process and amounted to an unconstitutional taking because the Property might be foreclosed.

In *GPI I*, Petitioner acknowledged in its Complaint that the NEORSD afforded it an administrative hearing but nonetheless claimed the hearing it received was inadequate because:

[I]t held [sic] before an employee of NEORSD, the burden is on the customer to prove the inaccuracy of the bill, NEORSD relies on Cleveland’s report of water consumption but produces no Cleveland witness who may be subject to cross-examination, and the customer cannot compel Cleveland to provide information at the hearing.

(Compl. ¶ 28.) *GPI I* was stayed after the NEORSD and the City of Cleveland filed motions to dismiss under Ohio Civ.R. 12(B)(6). It remains stayed pending resolution of the instant matter.

2. *GPI II*

a. Trial Court Decision

On September 21, 2017, the NEORSD issued a decision denying Petitioner's requests for an adjustment of the charges at issue in *GPI I* because Petitioner failed to present any direct evidence that its water meter was inaccurate. (Pet. App. at 33.) Petitioner then filed another suit on October 12, 2017 ("*GPI II*"), seeking to appeal the NEORSD's administrative determination under Chapter 2505 of the Ohio Rev. Code.

Ohio law requires parties seeking to appeal administrative determinations by political subdivisions under Chapter 2505 to file a bond pursuant to Ohio Rev. Code § 2505.06. On October 12, 2017, Petitioner also filed a motion styled as GPI's Amended Motion For Determining That No Supersedeas Bond Is Necessary To Perfect Notice of Appeal (hereinafter "Bond Motion," Pet. App. at 69-78). The Bond Motion requested that the Trial Court find that Petitioner was not required to post a bond to pursue its administrative appeal because the NEORSD's decision regarding its bill was not an order for the payment of money and, therefore, exempted under Ohio Rev. Code § 2505.12.¹ (Pet. App. at 70.) Alternatively, Petitioner requested that the Trial Court use its discretion to set the bond at \$50. (*Id.*) The Bond Motion made no reference to indigency or otherwise argue that Petitioner could not afford a bond. (*See id.*) The Trial Court denied

1. Petitioner pursued this argument with Ohio's Eighth District Court of Appeals but has not raised it as an issue for consideration in its Petition.

the request on October 19, 2017, finding that Ohio Rev. Code § 2505.06 applied and that the lien on the Property was insufficient to secure the amount of the unpaid sewer bills as the tax balance on the Property exceeded its value. (Pet. App. at 26-27.) Accordingly, the Trial Court set the bond at \$12,047.76. (*Id.* at 27.) Significantly, at no point prior to the expiration of the statutory period for perfecting an administrative appeal under Ohio law did Petitioner claim that it was indigent or unable to pay a bond in excess of \$50.

Petitioner failed to file any bond before the time to perfect an appeal had expired, and the NEORSD filed a motion to dismiss on November 1, 2017. Petitioner opposed the motion on November 28, 2017, reiterating its arguments that no bond should be required. (*Id.* at 47-68.) Specifically, Petitioner raised the same arguments about the nature of the hearing process made in *GPI I* and also claimed for the first time that the bond requirement in Ohio Rev. Code § 2505.06 was unconstitutional because Petitioner was allegedly indigent. (*Id.* at 48, 52-53.) On January 12, 2018, the Trial Court granted the NEORSD's Motion to Dismiss because Petitioner had not filed the required bond in a timely manner or substituted the bond pursuant to Ohio Rev. Code § 2505.11. (*Id.* at 24-25.) The Trial Court responded to Petitioner's constitutional attacks on Ohio Rev. Code § 2505 on grounds of indigency, stating that "[l]egislative enactments are to be afforded a strong presumption of constitutionality," (*Id.* at 24), and holding by implication that Petitioner had not overcome that strong presumption.

b. Ohio’s Eighth District Court of Appeals Decision

Petitioner appealed the Trial Court’s dismissal to Ohio’s Eighth District Court of Appeals. The Eighth District affirmed the Trial Court’s dismissal. In doing so, the Eighth District explicitly recognized that “Ohio Rev. Code 2505.06’s bond requirement did not deny GPI access to the courts or violate GPI’s right to a legal remedy,” that “a person’s constitutional right to access the courts is not unlimited,” and that “[i]n this case, GPI had access to the common pleas court.” (Pet. App. at 20.) The Eighth District also recognized that Petitioner had an alternative to posting a bond under Ohio Rev. Code § 2505.11, but that Petitioner had made no effort to substitute the bond under that statute. (*Id.* at 21.)

c. Supreme Court of Ohio Decision

Petitioner next sought review by the Supreme Court of Ohio. But Petitioner did not ask the Supreme Court of Ohio to review the due process and Equal Protection issues that is the subject of its Petition to this Court. Instead, the Petitioner asked the Supreme Court of Ohio to consider whether the Eighth District had improperly relied on the principle of constitutional avoidance.²

2. The specific Propositions of Law presented to the Ohio Supreme Court by Petitioner were:

- PROPOSITION OF LAW NO. 1: The constitutional-avoidance doctrine does not require a party challenging the constitutionality of a statute to have complied with the statute as a predicate to judicial review.

Moreover, Petitioner stated that the Ohio Supreme Court “should accept jurisdiction *not to resolve the underlying constitutional challenges but instead to clarify the scope of the constitutional-avoidance doctrine.*” (Pet. App. at 84) (emphasis in the original).

Petitioner argued that the Ohio Supreme Court should review the matter as a jurisdictional appeal under S.Ct. Prac.R. 5.02(A)(1) and 5.02(A)(2), which covers appeals raising “substantial constitutional question[s]” and a question of “public or great general interest.” (Pet App. at 83-91.) On May 29, 2019, the Ohio Supreme Court without elaboration declined to exercise jurisdiction (Pet. App. at 1.) Petitioner then filed a motion for reconsideration, arguing that the Ohio Supreme Court was required to hear the appeal under the Ohio Constitution. The Ohio Supreme Court also summarily denied that motion. (Pet. App. at 34.)

REASONS FOR DENYING THE PETITION

I. The Petition Misrepresents the Record In This Case

A. Petitioner’s Claim of Indigency Was Not Timely

As a threshold matter, Supreme Court Rule 15.2 requires that NEORS point out that Petitioner has misrepresented the record in this matter. Petitioner claims that it initially requested that the Trial Court

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- PROPOSITION OF LAW NO. 2: The constitutional-avoidance doctrine does not alter well-established rules for preserving error for appellate review.

(Pet. App. at 81.)

excuse it from posting the required bond because it could not afford to do so, and that after the Trial Court denied that request the NEORSD filed its motion to dismiss. (Pet. at 5-6.) Petitioner cites to documents filed with its opposition to the motion to dismiss and to the Bond Motion (*Id.* at 6.) However, the Bond Motion – which the Trial Court denied – made no reference to Plaintiff’s inability to pay and instead argued that the bond provision in Ohio Rev. Code § 2505.06 did not apply to its appeal and that the lien provided adequate security. (Pet. App. at 70-75.) It was only after the Trial Court rejected both of these arguments, set the bond at \$12,047.47, and the time to post the bond had passed that Petitioner claimed indigency. This unexplained delay led to a finding that any constitutional issue was not properly before the Eighth District and that the record was underdeveloped. Specifically, the Eighth District held that:

We further find that the administrative appeal was not the appropriate vehicle for determining the constitutionality of R.C. 2505.06, particularly because GPI did not assert its constitutional challenge to the statute in the declaratory judgment action or its motions for determining the necessity of a supersedeas bond. Rather, GPI raised the issue for the first time in opposing NEORSD’s motion to dismiss. Based on GPI’s belated constitutional challenge to R.C. 2505.06, the constitutional issue is underdeveloped in the record before this court.

(Pet. App. at 19,) citing *75 Pub. Square v. Cuyahoga Cty. Bd. Of Revision*, 76 OhioApp.3d 340, 346, 601 N.E.2d 628 (8th Dist.1991); *Cleveland v. Williams*, 8th Dist. Cuyahoga No.106454, 2018-Ohio-2937, 119.)

**B. The Bond Amount Was Set by the Trial Court,
Not Dictated by Statute.**

Additionally Petitioner fails to address the fact that the Trial Court set the bond at \$12,047.47 because the lien for the certified delinquent balance was inadequate security. Specifically, the Trial Court noted that:

[Plaintiff's] additional argument that [Defendant's] interest in the sewer bill charge has already been secured with a lien is without merit because the tax balance on the property at issue exceeds the value of the property. *See* [Plaintiff's Motion, Exhibits B & C.

(Pet. App. at 27.) The Petition suggests that the lien amount was dictated by the statute (Pet. at 5). But the Trial Court actually ordered the amount after a review of the documents presented by Petitioner regarding the lien. (*Id.*) Petitioner relies on claims that the bond was unnecessary for surety and duplicative because of the lien throughout its Petition. This includes Petitioner comparing the instant situations to a “double-bond requirement this Court rejected” and claiming that “Ohio Rev. Code § 2505.06 (Lexis 2019) imposes a bond requirement onto the person already *burdened by* the lien.” (Pet. at 13, 17.) These assertions are nonsensical given that the Trial Court found that the lien was not adequate security because of the other liens on the property and the fact that the bond amount was set by the Trial Court, not dictated by statute.

C. Petitioner Could Have Appealed Without Posting the Bond Even if it Had Established That It Was Indigent.

Petitioner also ignores the fact that both the Trial Court and Eighth District rulings specifically cite to the availability of an alternative to posting a bond. Specifically, Ohio Rev. Code § 2505.11 provides a mechanism to substitute for a bond by conveying property to the Court. The Eighth District recognized that Petitioner could have utilized this provision to pursue its appeal but failed to do so. (Pet. App. at 16.) Yet, Petitioner wholly ignores both the availability of the option to substitute the bond and the role it played in the Eighth District's opinion. The Petition argues that Petitioner was deprived of the opportunity to pursue an appeal by Ohio Rev. Code § 2505.06, but Petitioner conveniently ignores that it could have proceeded with the appeal under Ohio Rev. Code § 2505.11 under Ohio law.³ Accordingly, Petitioner's argument that indigency barred any appeal is inaccurate, and all of the state case law cited in the Petition is distinguishable on this basis alone.

D. The Eighth District Court of Appeals' Decision Did Not Rely On Ohio's Constitutional Avoidance Doctrine

The Petition further misrepresents the Eighth District's opinion. Contrary to Petitioner's representations

3. Upon information and belief, Petitioner owned two adjacent properties at the time it filed its Complaint that it could have pledged. Because Petitioner did not timely raise an indigency argument, however, it is not part of the record.

(Pet. at 7-8; 21-23), the Eighth District did not avoid the constitutional questions raised by Petitioner. Rather, it considered and then rejected them. (Pet. App. at 17-21.) Indeed, Petitioner acknowledges this fact when it asserts that “the Ohio Court of Appeals concluded that the lien and lack of judicial review had not deprived GPI of due process.” (Pet. at 18.)

To the extent that the Eighth District opinion mentioned the principle of constitutional avoidance, it did so in the context of characterizing the *Trial Court’s* decision, where it cited various Ohio cases for the proposition that a constitutional question will not be reached if a case can be decided on other grounds. (Pet. App. at 18-20). One of those citations included the words “constitutional avoidance,” (*id.* at 19), and that single reference forms the entire basis for Petitioner’s assertion that Ohio has “warped” the application of the constitutional avoidance doctrine.

However, after analyzing the Trial Court opinion, the Eighth District addressed Petitioner’s specific constitutional arguments. The Eighth District noted that “a person’s constitutional right to access the courts is not unlimited” and concluded that “we cannot say that Ohio Rev. Code § 2505.06’s bond requirement denied GPI access to the courts or violated GPI’s right to a legal remedy.” (*Id.* at 19-20.) The Eighth District further recognized that “[i]n this case, GPI had access to the common pleas court” and that “Ohio Rev. Code 2505.06’s bond requirement did not deny GPI access to the courts or violate GPI’s right to a legal remedy.” (*Id.* at 21.) Accordingly, contrary to Petitioner’s assertion, the Eighth District neither relied

on the constitutional avoidance doctrine nor avoided addressing the constitutional issues presented.⁴

Moreover, to the extent that the Petition includes a challenge to the supposed application of the constitutional avoidance doctrine, this argument is wholly unrelated to the question presented for review. Rather, it appears to be a repetition of the arguments Petitioner sought review of by the Ohio Supreme Court, arguments that the Ohio Supreme Court declined to consider.

II. Ohio's Court Of Last Resort Has Not Considered The Question That Forms The Basis Of This Petition

Petitioner now asks this Court to consider a question that was not considered by the Ohio Supreme Court and that it did not request the Ohio Supreme Court to review. Petitioner is therefore not seeking review of a decision by a state court of last resort, but a review of the decision of an intermediate state appellate court. While Petitioner requested that the Supreme Court of Ohio review the Eighth District's decision, the Supreme Court of Ohio twice declined such a review. Accordingly, Petitioner's assertion that this Court has jurisdiction under 28 U.S.C.

4. The Eighth District opinion concludes with the statement that “[f]or all of the foregoing reasons, we decline to address GPI’s constitutional challenge to R.C. 2505.06.” (¶ 39). Yet while the Eighth District declined to reach the question of the constitutionality of Ohio Rev. Code § 2505.06 generally, the prior stated reasons for doing so included an explicit determination that the Petitioner had failed to timely raise a constitutional challenge to Ohio Rev. Code § 2505.06, and that in the instant matter Petitioner had not been denied access to the court.

§ 1257(a) is incorrect. 28 U.S.C. § 1257(a) allows for review of “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had.” As the Ohio Supreme Court declined jurisdiction over Petitioner’s review, there is no final judgment by Ohio’s highest court, which renders 28 U.S.C. § 1257(a) inapplicable to the instant matter.

Moreover, the Petition neglects to mention that it is now requesting this Court review a wholly separate question than it presented to the Ohio Supreme Court. In its memorandum seeking jurisdiction by the Ohio Supreme Court, Petitioner urged that that Court “should accept jurisdiction *not to resolve the underlying constitutional challenges, but instead to clarify the scope of the constitutional-avoidance doctrine*— that is, to clarify the appellate court’s obligation to address GPI’s constitutional arguments on their merits.” (Pet. App. at 84) (emphasis in the original). However, Petitioner asks this Court to review constitutional challenges to Ohio Rev. Code § 2505.06 – challenges which it raised before the Eighth District but chose not to appeal to the Ohio Supreme Court. Not only did Petitioner abandon any federal question regarding due process and Equal Protection that it may have had, but it failed to exhaust the available state remedies when it requested that that Ohio Supreme Court consider only the applicability of the constitutional avoidance doctrine.

III. There Is No State Court Split Regarding Bond Requirements For Administrative Appeals

Petitioner fails to cite to any case from any state that holds that a bond requirement to appeal an administrative

determination similar to the one at issue here is unconstitutional. That is because indigency is not a suspect class. *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973). Indeed, this Court has repeatedly found that financial barriers to access in civil matters are not unconstitutional. In *Ortwein*, 410 U.S. at 656, this Court rejected arguments that a filing fee required to challenge an agency determination reducing welfare awards violated Equal Protection. *Id.* at 656. Applying rational basis review, this Court held that the fees were not unconstitutional because their purpose was obvious and the fees were not disproportionate. *Id.* Similarly, in *U.S. v. Kras*, 409 U.S. 434, 447, (1973), this Court recognized that the rationale for fees required prior to filing bankruptcy was readily apparent and did not violate Equal Protection. *Cf. Burns v. State of Ohio*, 360 U.S. 252 (1959) (holding that filing fees requirements for appellate review in criminal cases was unconstitutional).

In *Lyle*, 34 Ohio St.3d 22, the Ohio Supreme Court held that a requirement to prepay a civil penalty in order to appeal an administrative decision did **not** violate Equal Protection, even though the appellant submitted an affidavit of insolvency. The Court concluded that because the only interest at issue was pecuniary and wealth is not a suspect class, only a rational basis was required to satisfy Equal Protection requirements. *Id.* at 26-27. This Ohio Supreme Court holding is wholly consistent with this Court's earlier decision in *Lindsey v. Normet*, 405 U.S. 56, 69-74 (1972), where this Court determined that a double-bond required for tenants to appeal evictions was unconstitutional. This Court in *Lindsey* applied rational basis review and determined that the statute's imposition of a bond for twice the rental value – which would be automatically forfeited if the underlying decision

was upheld – was arbitrary and irrational because it was unrelated to the actual rent accrued or the damages incurred by the landlord. *Id.* at 77-78. Notably, this Court in *Lindsey* recognized that securing disputed property and discouraging insubstantial appeals were legitimate state interests. *Id.* at 78 (“We do not question here reasonable procedural provisions to safeguard litigated property.”). Ultimately, this Court’s decision turned on the fact that “the State ha[d] not sought to protect a damage award” but “ha[d] automatically doubled the stakes when a tenant seeks to appeal an adverse judgment under [the law].” *Id.* at 78. Here, there is no question that the stakes have been doubled as in *Lindsey* because the Trial Court found that the lien did not provide security for the District because of the existence of other liens, nor does Ohio Rev. Code § 2505.06 dictate a double bond.

The bond requirement set forth in Ohio Rev. Code § 2505.06 neither limits a criminal defendant’s access to an appeal nor imposes a disproportionate and automatic penalty on appellants. Moreover, the actual bond set by the Trial Court in this matter was determined by the amount of the certified sewer amounts that GPI challenges. GPI has not – and cannot – argue that setting the bond as security on the amount of its unpaid sewer bills is arbitrary. Courts have routinely recognized that states have a right to condition access on providing an adequate security. *See Adsani v. Miller*, 139 F.3d 67, 77 (2d Cir.1998) (“Once established, the right to appeal, however, may be limited by statute requiring, for instance, the posting of security for expenses...without offending principles of Equal Protection or Due Process fairness.”); *see also Lindsey*, 405 U.S. at 78-79.

To the extent the Petition tries to rely on *Boddie v. Connecticut*, 401 U.S. 371 (1971), any comparison to the instant matter is entirely misplaced because *Boddie* did not involve the administrative appeal of a pecuniary dispute. 401 U.S. 371. Rather, the Court in *Boddie* – after a lengthy discussion that due process is generally a consideration as to defendants – reached the conclusion that due process considerations in cases involving the dissolution of marriage should be viewed similarly to due process for defendants. *Id.* at 374-375. The Court ultimately made an exception to that general principle given the unique importance of marriage to society. *Id.* at 374-375. *Boddie* expresses the exception rather than the rule and is wholly inapplicable here. As noted in later cases, “the Court has consistently set apart from the mine run of civil cases those involving state controls or intrusions on family relationships.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 103 (1996) (“[A] constitutional requirement to waive court fees in civil cases is the exception, not the general rule.”).

In the face of clear guidance by this Court regarding the right to access courts, Petitioner can offer only a number of readily distinguishable state cases. However, this Court has already established clear standards for when barriers to court access may raise constitutional concerns. How various state courts have reviewed their laws governing access to their courts does not create a state court “split” that justifies review by this Court or alteration of this Court’s long-standing precedent.

Notwithstanding this fact, the Petition fails to cite case law from *any* state that holds that a bond for the purposes of security in an administrative appeal is unconstitutional.

Rather, the statutes at issue in the cases proffered by Petitioner either prevented any administrative review, required the prepayment of additional costs or penalties, or turned on state-specific considerations. For example, in *Psychiatric Association v. Siegel*, 610 So.2d 419 (Fla.1992), the Florida Supreme Court relied on the interpretation of a Florida constitutional provision regarding the right to access and a review of Florida state law. Additionally, the Florida law at issue required a bond that included costs and attorneys' fees. The court in *Siegel* also made a point of distinguishing case law regarding a requirement for pre-suit mediation before a medical mediation panel specifically because the bond requirement at issue involved no review on the merit by a panel before requiring the posting of a bond. The Supreme Court of Idaho's decision in *Frizzell v. Swafford*, 104 Idaho 823, 827–828, 663 P.2d 1125, 1129–1130 (1983), turned on the fact that the small claims proceedings at issue did not permit the parties to have counsel. The Idaho statute in *Frizzell*, unlike the Ohio statute here, required prepayment of costs and attorney's fees in addition to a surety.

Moreover, *Coroneos v. Montgomery County*, 161 Md. App. 411, 427, 869 A.2d 410, 419 (2005), dealt with a Maryland law denying an administrative hearing until costs for animal care were paid; it was not an appeal to state courts of an administrative determination. The Maryland Supreme Court addressed this matter in the context of statutory interpretation of Maryland law and did not consider the constitutionality of the statute, much less whether that statute ran afoul of due process. Similarly, the Nebraska Supreme Court in *Jones v. State, Department of Revenue*, 248 Neb. 158, 167, 532 N.W.2d 636, 643 (1995), addressed the constitutionality of an

Administrative Procedure Act that barred parties from getting an administrative hearing until they paid the taxes they were disputing, requested a refund, and were denied. *See also Boll v. Dept. of Revenue, State of Neb.*, 247 Neb. 473, 480, 528 N.W.2d 300, 305 (1995) (analyzing § 77-4312(4) and finding that barrier to a redetermination hearing, which prevented the exhaustion of administrative remedies, unconstitutionally prevented access to court.)

Nor does *Ball v. Gee*, 243 Mont. 406, 409-410, 795 P.2d 82 (1990), address the question of bonds for appeals of administrative decisions. Rather, the Montana Supreme Court in *Ball* considered a Montana state statute that required defendants in a quiet title action to deposit with the court an amount equal to the taxes owed by the appellant, three years' worth of taxes paid by the current owner, and whatever improvement and maintenance costs were incurred by the current owner within three years of purchase. *Id.* Failure to pay these amounts prevented the defendants from raising any defenses in a quiet title action. *Id.*

Most notably, in *State ex rel. Caulk v. Nichols*, 281 A.2d 24, 26-27 (Del. 1971), Delaware held that the Delaware statute at issue was not unconstitutional. It specifically rejected any application of *Boddie* and noted that “[w]e prefer...to leave it to the Legislature to determine whether any change should be made in the conditions under which an appeal may be taken from the Justice of the Peace Courts.” (affirming decision refusing to waive statutory bond requirement).

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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