In the
Supreme Court of Ohio

STATE EX REL. LIFEWISE, INC., Relator, vs. OHIO CIVIL RIGHTS COMMISSION, Respondent.	Case No. 2025-754 Original Action Writ of Mandamus or, in the alternative, Prohibition

RESPONSE IN OPPOSITION TO SUGGESTION OF MOOTNESS

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INTRODUCTION

This case is not moot. And nothing in the Ohio Civil Rights Commission's filing justifies a contrary conclusion. *See* Suggestion of Mootness Submitted on Behalf of Respondent, Ohio Civil Rights Commission at 4 (July 1, 2025).

Begin by recalling what this case is about. The Ohio Constitution expressly prohibits "any interference with the rights of conscience" and mandates the protection of "every religious denomination in the peaceable enjoyment of its own mode of public worship …." Ohio Const., art. I, §7. This provision—which confers even broader religious-liberty protections than the First Amendment to the U.S. Constitution, *Humphrey v. Lane*, 89 Ohio St. 3d 62, 67 (2000)—entitles religious entities to make ecclesiastical decisions free from governmental interference. *See generally* Compl. Those ecclesiastical decisions include whom to hire to a ministerial role. Thus, under the so-called "ministerial exception," religious entities have a right to decide whom to terminate, and for what reasons, free from government oversight. *See Salzgaber v. First Christian Church*, 65 Ohio App.3d 368, 372 (4th Dist. 1989); *accord Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 746 (2020).

Rachel Snell worked for LifeWise in a ministerial role, as a teacher-minister. Compl. ¶¶21, 56. LifeWise placed Ms. Snell on administrative leave because of repeated, unrepentant misconduct. Compl. ¶¶ 18–21. She responded by quitting and filing a baseless discrimination charge against LifeWise with the Ohio Civil Rights Commission. LifeWise

then filed this mandamus action, arguing that the Ohio Constitution's ministerial exception barred the Commission from investigating Ms. Snell's charge. Soon thereafter, the Commission (1) terminated its investigation of Snell's charge against LifeWise and (2) issued a letter purporting to give Ms. Snell the right to sue LifeWise.

The Commission wrongly claims it mooted this case by ending the investigation and issuing a right-to-sue letter. That is wrong—and as the party urging mootness, the Commission bears the burden of proving otherwise. *See Sullivan v. Benningfield*, 920 F.3d 401, 410 (6th Cir. 2019); *State ex rel. Parikh v. Berkowitz*, 2024-Ohio-4686, ¶ 58 (1st Dist.). A case is moot only when it is no longer possible for a court to order effectual relief. This Court can still issue effective relief by awarding a writ of mandamus confirming that the Commission lacks jurisdiction over this dispute, thereby forbidding the Commission from supporting any lawsuit Ms. Snell brings. The Court can also order the Commission to rescind its right-to-sue letter—a letter it lacked jurisdiction to award.

In any event, *even if* the case were moot, the Court could still hear the case under two exceptions for mootness: one applicable to cases presenting issues capable of repetition yet evading review, and a second applicable to cases presenting "a debatable constitutional question" or a question "of great public or general interest." *Franchise Devs., Inc. v. City of Cincinnati*, 30 Ohio St. 3d 28, syl. ¶1 (1987).

I. The Commission's issuance of a right-to-sue letter does not moot the case.

Under the Ohio Constitution, Article I, §7, the Commission lacks jurisdiction over a dispute between a religious organization and a former employee regarding the organization's ecclesiastical employment decisions. *See* Compl. ¶¶34–47. Therefore, the Commission acted without jurisdiction when it investigated Ms. Snell's charge. And it again acted without jurisdiction when it issued a Letter of Determination and a Notice of Right to Sue to Ms. Rachel Snell. Now armed with a right to sue LifeWise, Ms. Snell can bring a lawsuit and ask a different tribunal to second-guess the employment decisions of a religious organization. The Commission thus exacerbated its constitutional violation by issuing the right-to-sue letter: in addition to unconstitutionally exercising jurisdiction over the charge against LifeWise, it has now given Ms. Snell a right-to-sue letter that it lacked constitutional authority to issue.

Moreover, the Commission may not even be done with Ms. Snell's claim. Issuing a notice of a right to sue "does not prohibit the commission from offering assistance to the person to whom the notice was issued." R.C. 4112.051(M). Thus, by statute, the Commission remains in the wings ready to assist Ms. Snell in litigating her potential claim against LifeWise.

It follows that the Commission did not moot this case by issuing its right-to-sue letter and closing the investigation. "A case is moot when without any fault of the defendant, an event occurs which renders it impossible for a court, if it should decide the case in

favor of the plaintiff, to grant him any effectual relief whatever." *State ex rel. Wood v. Rocky River*, 2021-Ohio-3313, ¶13 (quotation marks omitted, alteration accepted). Here, the Court can grant meaningful relief by recognizing that the Commission lacked jurisdiction. By saying so in an opinion awarding a writ of mandamus, the Court will foreclose the Commission "from offering assistance" to Ms. Snell in any future litigation. R.C. 4112.051(M). Any such order would also necessitate the recission of the right-to-sue letter; after all, "[w]hen an administrative agency renders a decision without subject-matter jurisdiction, the order is void and subject to challenge at any time." *In re Complaint of Pilkington N. Am., Inc.*, 2015-Ohio-4797, ¶22. Because the Commission acted without jurisdiction, its right-to-sue letter is void. The Court could issue a writ of mandamus saying so, and couple that writ with an order requiring the Commission to rescind the notice for lack of jurisdiction. All that is meaningful relief the Court may still award, which defeats the Commission's mootness argument.

II. If the case were moot, the Court could hear it under two exceptions to the mootness doctrine.

Two exceptions to the mootness doctrine allow this Court to hear the case regardless.

A. If this case were moot, the capable-of-repetition-yet-evading-review exception would apply.

First, the case falls within the capable-of-repetition-yet-evading-review exception to mootness. This exception applies when "(1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable

expectation that the same complaining party will be subject to the same action again." *State ex rel. Cincinnati Enquirer v. Ohio Dep't of Pub. Safety*, 2016-Ohio-7987, ¶29 (citation and quotation marks omitted).

In *Ohio Department of Public Safety*, the Court applied this exception to a case involving a public-records request for dash-cam recordings of a police chase. The first element was satisfied because the short duration of the suspect's criminal proceedings and the subsequent release of the recordings "truncated the [relator's] ability to fully litigate its mandamus claim." *Id.* at ¶30. And the second element was satisfied given the "public interest in dash-cam recordings"; in light of that public interest, the Court could "reasonably expect the [relator] and other media outlets to continue to request dash-cam recordings and law-enforcement agencies to continue to withhold them." *Id.* at ¶31.

The same analysis applies here, starting with element one: "the challenged action is too short in its duration to be fully litigated before its cessation or expiration." *Id.* at ¶29. The Commission must complete a preliminary investigation of a charge within one hundred days after the charge is filed. R.C. 4112.05(B)(3)(a). And a complainant may, at any time, ask the Commission to cease its investigation and issue a right to sue. R.C. 4112.051(D)(2). Thus, as was true of the relator in *Ohio Department of Public Safety*, the challengers to the Commission's jurisdiction have too truncated an ability to fully litigate a mandamus or prohibition claim. The statutory timeline simply creates too tight a turnaround to obtain meaningful relief.

Now turn to the second element, which asks whether "there is a reasonable expectation that the same complaining party will be subject to the same action again." *Ohio Dep't of Pub. Safety*, 2016-Ohio-7987 at ¶29. This element is satisfied because there is a reasonable expectation that this will happen to LifeWise again. LifeWise employs teacher-ministers throughout Ohio and will be forced to make difficult ecclesiastical decisions that affect employment again. LifeWise can thus reasonably expect to be subjected to further baseless charges by disgruntled employees. The same goes for other religious employers. If the public's interest in dash-cam videos was enough to create a reasonable expectation that journalists would request those videos in the future, *id.* at ¶31, then religious employers' interest in avoiding being subjected to bureaucratic oversight in the hiring of ministerial employees must create the same expectation.

B. This case may be considered under the exception to mootness for cases presenting debatable constitutional questions or questions of great or general public interest.

"Although a case may be moot with respect to one of the litigants, this court may hear the appeal where there remains a debatable constitutional question to resolve, or where the matter appealed is one of great public or general interest." *Franchise Devs., Inc. v. City of Cincinnati*, 30 Ohio St. 3d 28, syl. ¶1 (1987). *Even if* this case were moot, it still presents a debatable constitutional question that this Court has not resolved: whether Article 1, §7's ministerial exception functions as a jurisdictional bar (which would foreclose the Commission from even investigating ministerial decisions by entities like LifeWise) or an

affirmative defense on the merits (in which case the ministerial exception can be raised only in litigation subsequent to the investigation). Compl. ¶¶44–55.

Before the Supreme Court decided *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, the federal circuits were split on this question as it related to the federal constitution. 565 U.S. 171, 195, fn. 4 (2012). Although either result had the support of well-reasoned decisions, Compl. ¶52, *Hosanna-Tabor* held that the ministerial exception afforded by the First Amendment constitutes only an affirmative defense. But this Court has ample reason to read the Ohio Constitution differently. Compl. ¶55; *see also State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶¶21–22. And it has not had the opportunity to resolve this important issue of state constitutional law—a question that is indisputably of public and general interest. Thus, if necessary, the Court should invoke the exception to mootness for cases presenting debatable constitutional questions of great public interest, allowing it to resolve this case.

CONCLUSION

The Court should overrule the Commission's Suggestion of Mootness and retain jurisdiction over this case.

July 11, 2025

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CERTIFICATE OF SERVICE

I certify that, on July 11, 2025, pursuant to Supreme Court Rules of Practice 3.11(C)(1), I served copies of the foregoing by electronic mail upon:

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