Quarterly Review

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Ohio Association *of* Civil Trial Attorneys

A Quarterly Review of Emerging Trends in Ohio Case Law and Legislative Activity...

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President's Note

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Like every good Ohioan, I am an Ohio State football fan. I have been one since my family moved to Ohio when I was eight years old. I raised my daughters to be Ohio State football fans. From the time they could speak, they knew the only response to "OH" is "IO." In fact, I became part of a stupid human trick. When my younger daughter was in college in New England, I received a random text one Saturday night with a simple "OH." I responded in seconds with an "IO." She responded with a thanks. I later learned she bet someone that by texting me "OH" I would respond "IO." On game day Saturday mornings, we played *Le Régiment de Sambre et Meuse* performed by the Best Damn Band in the Land while parading and marching through the downstairs of our house waving an Ohio State Flag on our way to fly outside. Thus, like the rest of the Ohio State nation, I was crushed by Ohio State's loss to Oregon last month.

But beyond my Ohio State fandom and the final score, I was disappointed by the decision of Oregon's Head Coach, Dan Lanning, to intentionally have 12 men on the field for the penultimate play of the game. The extra player gave Oregon an advantage on the play. Lanning knew that a five yard penalty would still have Ohio State out of field goal range…a field goal that would have won the game…and the running of the play would sap precious time off the clock. This in not just sour grapes of a disappointed Ohio State fan. Don't get me wrong-Oregon is a great team and deserves their ranking. Lanning is an outstanding coach. Even without the 12th man on the field, Ohio State may still have not completed a pass or completed a pass to get in field goal range. Even if field goal range, the field goal attempt may not have been good. The game was not determined on this one play. And Ohio State was admittedly outplayed by Oregon.

My disappointment arises from a coach intentionally violating the rules because it gained his team an advantage. Intentionally violating the rules is not within the spirit of the rules and certainly not within the spirit of good sportsmanship. Winning overrode considerations of good sportsmanship, of fairness and of doing what is right.

Unfortunately, I have seen this winning at all costs mentality too many times during my years of practice. Another lawyer recently related to me a situation he encountered. He was defending a wrongful death suit. His opposing counsel, to avoid alerting him to the subpoena for the records, issued a subpoena to obtain records under the estate case in Probate Court. This is winning at all costs without a regard to doing what is right. I often quote Sherrilyn Kenyon's line, "Just because you can doesn't mean you should." Yes, we have a duty to our clients, but we also have a duty to the judicial system. I am positive we all have examples of other attorneys acting in ways that are technically legal but not within the spirit of professionalism and what is right. Such behavior occurs on both sides. Too many lawyers become caught up in winning and ignore their duty to the judicial system. Frequently these are the same lawyers facing disciplinary action. This damages the view of the legal system with the general public. It also injures the standing of lawyers in the community. I believe OACTA stands for doing what it right and for encouraging our members to do so. I believe the vast majority of the plaintiff's bar shares this view. It is certainly my hope that our newly formed Joint Committee with the Ohio Association of Justice will promote and encourage lawyers to do what it right and not merely do what they can.

This is my final President's Message. Thank you for indulging me by reading my messages over the last year. It has been a pleasure to serve you.

Introduction

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The Employment Law and Appellate Advocacy committees are pleased to bring you this edition of the *OACTA Quarterly Review*. We are extremely grateful to the contributions of our authors who were willing to share their perspectives on interesting legal developments. We trust you will find them informative and useful to your practice.

Three articles from our employment attorneys all examine varying developments in administrative law. The first article discusses the Equal Employment Opportunity Commission's 2024 final regulations implementing The Pregnant Workers Fairness Act (PWFA). In the article, **Christina Corl** & **Jacob Levine** with *Plunkett Cooney*, summarize unique aspects of the PWFA and the expansive nature of the regulations with respect to reasonable accommodations for pregnancy-related conditions. Anyone unfamiliar with the PWFA, will benefit by reading this article.

The second article from the *Reminger* duo of **Joseph Borchelt** and **Ian Mitchell** updates us on the long and winding saga of the Federal Trade Commission's Rule prohibiting the use of noncompetition agreements in employment. The authors examine the status of current legal challenges to the FTC Rule and offer their insights into the prospect for the continued use of noncompetition agreements in the workplace.

The third employment law article is from the tandem of **Nicholas Bartlett** and **Brigid Heid** at *Eastman & Smith* and examines the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which eliminates the forty-year standard of *Chevron* deference for judicial challenges to actions by administrative agencies. The article examines post-*Loper Bright* decisions, the potential impact of *Loper Bright* on future agency rulemaking, and Ohio's application of *Chevron*-style deference.

The Appellate Advocacy committee presents two articles. **Brianna Prislipsky**, with *Reminger*, analyzes the recently passed H.B. 179, which addresses two Ohio Supreme Court decisions – *Elliott v. Durrani*, 2022-Ohio-4190 (claim tolling) and *Clawson v. Hts. Chiropractic Physicians L.L.C.*, 2022-Ohio-4154 (vicarious liability). And, **Anne Marie Sferra**, with *Bricker Graydon*, provides an overview of extraordinary writs and original actions in Ohio's appellate courts because you never know when your client may need one.

Enjoy this issue of the *OACTA Quarterly Review*!

Implementing the Pregnant Workers Fairness Act: Key Insights for Legal Practitioners

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New Regulations for Pregnant Workers Take Effect in Ohio

On June 18, 2024, the Equal Employment Opportunity Commission (EEOC) implemented its final regulations for the Pregnant Workers Fairness Act (PWFA), originally issued on April 19, 2024.[1] These regulations provide crucial clarifications and address gaps in the original legislation, defining key terms and outlining the law's applicability to various employers and employees.

Understanding the PWFA and Its Legal Context

The PWFA requires employers with 15 or more employees to provide reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so would cause undue hardship. This law applies to both private and public sector employers, including federal agencies, Congress, employment agencies, and labor unions.

The PWFA fills gaps left by other federal and state laws. For instance, while the Family and Medical Leave Act (FMLA) offers up to 12 weeks of unpaid leave post-childbirth, it only applies to larger employers and has specific eligibility criteria. Similarly, the PUMP Act provides limited protections for nursing mothers. The PWFA, however, offers broader and more explicit protections for pregnancy-related conditions.

The PWFA draws heavily from the Americans with Disabilities Act (ADA) but extends its protections. Under the ADA, a qualified individual with a disability is entitled to reasonable accommodation only if they can perform the essential functions of their job with or without accommodation. The PWFA, however, considers employees "qualified" even if they are temporarily unable to perform essential job functions, provided they can do so in the near future and the inability can be reasonably accommodated. This effectively suspends the requirement to perform essential functions temporarily, a significant departure from the ADA's standards.

EEOC's Expansive Interpretive Guidance

The EEOC's final regulations provide extensive guidance on implementing the PWFA. Reasonable accommodations are broadly defined as "modifications or adjustments" to the application process or work environment that enable an employee to "enjoy equal benefits and privileges of employment." This includes the temporary suspension of essential job functions.[2]

The EEOC outlines several reasonable accommodations, such as making facilities accessible, job

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restructuring, modified work schedules, uniform modifications, unpaid leave for recovery from childbirth, attending prenatal appointments, therapy for postpartum depression, telework, and accommodations for lactation. Employers may need to engage in an informal, interactive process to determine if an accommodation is reasonable.

The EEOC also identifies four "predictable assessments" considered presumptively reasonable:

1. Permitting additional restroom breaks as needed.
2. Allowing breaks to eat and drink as needed.
3. Permitting employees to carry or keep water and drink as needed.
4. Allowing employees whose work requires standing to sit and vice versa as needed.

Accommodation requests do not need to be in writing. Employees or their representatives only need to communicate the need for an adjustment due to a physical or mental condition related to pregnancy, childbirth, or related medical conditions. Employers are not required to seek supporting documentation unless it is reasonable to determine whether the employee has a condition requiring a work adjustment.

Documentation and Reasonableness

There are specific situations where requesting documentation is not reasonable, such as when the limitation and needed adjustment are obvious, when the employer already has sufficient information, or when the employee provides self-confirmation of pregnancy. Additionally, accommodations related to pumping or nursing at work do not require supporting documentation if the employee provides self-confirmation.

Practical Guidance for Employers

1. **Update Policies and Procedures**
   - Review and Revise Policies: Ensure that company policies are updated to reflect the requirements of the PWFA and the EEOC's guidance.
   - Communicate Changes: Inform employees about the updated policies and their rights under the PWFA.
2. **Train HR and Management**
   - Conduct Training Sessions: Regularly train HR professionals and managers on the PWFA requirements and the process for handling accommodation requests.
   - Emphasize Confidentiality: Highlight the importance of maintaining confidentiality throughout the accommodation process.
3. **Engage in the Interactive Process**
   - Collaborative Approach: Encourage a collaborative dialogue with employees to identify suitable accommodations.
   - Document Interactions: Keep detailed records of all accommodation requests and the steps taken to address them.
4. **Implement Reasonable Accommodations Promptly**
   - Assess Reasonableness: Evaluate the feasibility of requested accommodations and implement them without undue delay.
   - Monitor and Adjust: Regularly review the effectiveness of accommodations and make necessary adjustments.
5. **Utilize External Resources**
   - Seek Expert Guidance: Consult resources such as the Job Accommodation Network (JAN) and legal experts for additional support and best practices.

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Conclusion

By understanding the PWFA and the EEOC's interpretive guidance, employers can ensure compliance and create a supportive work environment for pregnant employees. As labor and employment attorneys, it is our role to provide our clients with the tools and knowledge to navigate these changes effectively.

ENDNOTES

1 https://www.federalregister.gov/documents/2024/04/19/2024-07527/implementation-of-the-pregnant-workers-fairness-act

2 https://www.eeoc.gov/summary-key-provisions-eeocs-final-rule-implement-pregnant-workers-fairness-act-pwfa

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The Current Status & Potential Fate of the FTC Non-Compete Rule

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As many working in the employment litigation field likely already know, the Federal Trade Commission issued a proposed rule in January 2023, which sought to ban employers from using non-competition agreements for its employees. The FTC indicated that the proposed rule was intended to address what it characterized as the "widespread and often exploitative practice that suppresses wages, hampers innovation, and blocks entrepreneurs from starting new businesses." While the Rule had its supporters, there were many in business and government who opposed the effort, arguing that "non-competes" are essential to protecting human capital investment, as well as proprietary information. Others went further and warned that an outright ban would foster chaos in the business community and preempt the laws of virtually all states, which had historically permitted non-competes. Although a final Rule was ultimately adopted by the FTC, it was challenged immediately in court, which most notably resulted in the Rule being set aside by a federal court from the Northern District of Texas in August. While the Rule is dead on arrival for now, it may yet be resurrected, given that the FTC appealed the decision to the Fifth Circuit Court of Appeals on October 18th.

The critical language of the FTC's final Noncompete Rule would mandate that:

With respect to a worker other than a senior executive, it is an unfair method of competition for a person:

(i) To enter into or attempt to enter into a non-compete clause;
(ii) To enforce or attempt to enforce a non-compete clause; or
(iii) To represent that the worker is subject to a non-compete clause.

While the Rule purports to have retroactive effect, the Rule does make an exemption for "senior executives" – meaning an employee in a policy-making position who receives at least $151,164 in annual compensation – in that only prospective non-competes are prohibited, while past agreements remain enforceable. The FTC elected to carve out protection for existing non-competes for senior executives "because this subset of workers is less likely to be subject to the kind of acute, ongoing harms currently being suffered by other workers subject to existing non-competes and because commenters raised credible concerns about the practical impacts of extinguishing existing non-competes for senior executives."

The challenges to the Rule were swift and led primarily by business lobbyists and corporations that saw a significant need for non-competes to protect legitimate business interests. In the Texas federal case, Ryan LLC brought the initial complaint, but the company was quickly joined by the U.S. Chamber of Commerce, as well as other regional

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business associations. The main arguments raised at the trial level were that, in enacting the Rule, it did so without sufficient statutory authority because: (1) the FTC is not empowered to issue substantive unfair-competition rules; (2) a categorical prohibition of all non-competes is inconsistent with the definition of "unfair methods of competition" under the FTC Act; and (3) the FTC cannot retroactively invalidate contracts that are otherwise valid under pre-existing state law. The Plaintiff and Intervenors also argued that the Rule was "arbitrary and capricious" within the meaning of the Administrative Procedure Act because: (1) the FTC supplied no evidence to justify a categorical ban; (2) the FTC ignored lower-cost alternatives that would have achieved its stated objectives; and (3) the FTC relied on a flawed cost-benefit analysis to justify the Rule.

In filing the lawsuit in the U.S. District for the Northern District of Texas, Ryan LLC took advantage of a favorable jurisdiction that has come under scrutiny for its favored status among conservative activists who seek to challenge agency action under Democratic administrations. However, parallel challenges were also filed in other federal courts, including the Eastern District in Pennsylvania and the Middle District of Florida. The federal district court in the Pennsylvania case refused to enjoin the Non-Compete Rule, while the Florida court sided with the plaintiffs similar to the Texas court in *Ryan LLC*. Given the split of decisions on the issue, the future of the Non-Compete Rule is very much up for grabs, as regardless of how the U.S. Circuit Courts of Appeals ultimately rule, the matter could end up before the U.S. Supreme Court sometime in the next two terms. Given the highest court's recent ruling in *Loper Bright Enterprises v. Raimondo*, which reversed the Court's long-standing view of giving deference to federal agencies under the Chevron doctrine, it is difficult to see how the FTC Non-Compete Rule survives.

In Ohio, "[n]on-compete agreements have long been recognized as valid." Additionally, prevailing Ohio law holds that "[a] covenant restraining an employee from competing with his former employer upon termination of employment is reasonable if the restraint is no greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public.'" On its face, the FTC's new Non-Compete Rule directly conflicts with Ohio law and would preempt it if the Rule went into force. As such, Ohio businesses and lawyers alike should continue to monitor developments in the pending federal appeals cases to see which way the wind ultimately blows. Affirming the Texas and Florida decisions would mean a continuation of the status quo in Ohio. A reversal would cause hundreds of businesses in this state to immediately question whether and to what extent their proprietary information has been exposed.

In the interim, companies should consider both potential scenarios and be prepared for either outcome. The FTC Rule doesn't speak to non-solicitation or non-disclosure agreements specifically, so there's certainly opportunity to use both in an effort to stop-gap a company's concerns related to proprietary information if non-competes suddenly go away. Keep in mind, though, that the Rule does prohibit *de facto* non-competes, particularly where the agreement or provision is "written so broadly that it effectively precludes the worker from working in the same field after the conclusion of the worker's employment with the employer." Thus, companies and their counsel should take care to ensure that an NDA or non-solicitation agreement isn't written to effectuate the purpose of a non-compete albeit in separate form. Either way, the pause in the action of the federal appeals cases provides a chance for Ohio businesses to connect with legal counsel and develop a comprehensive strategy for responding to whatever comes next.

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Sorry, Administrators, No Deference for You!

An Examination of Loper Bright *and the Demise of the* Chevron *Doctrine*

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On June 28, 2024, the United States Supreme Court issued its much-anticipated decision in *Loper Bright Enterprises v. Raimondo*[1], examining a court's role in reviewing administrative agency rulemaking authority. In *Loper Bright*, the Court examined its holding in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, a case which has stood for forty years[2] and famously (or infamously, depending on your perspective) devised a two-step process for judicial review of administrative agency rulemaking, which became known as the *Chevron* deference doctrine. Under *Chevron* deference, when considering the meaning of administrative rules, courts were to give a certain level of deference to an agency's reasonable interpretation of the statute administered by the agency. The *Chevron* doctrine established that a reviewing court should first ask whether "Congress has directly spoken to the precise question at issue."[3] If Congress's intent was clear, then that was the end of the analysis, but if it had not, the reviewing court would examine whether the rulemaking was based on a permissible construction of the authorizing statute.[4] The rationale for *Chevron* deference was that the agencies are considered the subject matter experts and are therefore best positioned to draft rules consistent with their understanding of a governing statute.

With its decision in *Loper Bright,* the Supreme Court was called upon to determine whether *Chevron* should be overruled. In its 6-3 decision, the Court cast aside *Chevron* deference and replaced it with the requirement that courts must exercise their independent judgment to determine whether an agency has acted within its statutory authority.[5] According to *Loper Bright*, the *Chevron* decision impermissibly allowed courts to defer to an agency's interpretation of a statute. Instead, the Court determined, on par with the role of the judicial branch of our American government, "courts must exercise independent judgment in determining the meaning of statutory provisions."[6] The Court relied upon the Administrative Procedure Act ("APA"), which serves "'as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices.'"[7] Thus, a court's review of agency action should comport with the APA:

> When the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in reasoned decisionmaking within those boundaries[.][8]

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As for the forty-years' worth of cases decided under *Chevron*, the Court indicated that cases decided prior to *Loper Bright* are not automatically overruled: "[W]e do not call into question prior cases that relied on the *Chevron* framework."[9] So far, it appears that some courts are heeding this call. For example, shortly after *Loper Bright* was decided, the Fifth Circuit in *Mayfield v. United States Department of Labor*[10] denied a challenge to the 2019 Minimum Salary Rule issued by the Department of Labor (DOL) raising from $455 per week to $684 per week, the minimum salary level required to qualify for certain white-collar exemptions[11] under the Fair Labor Standards Act ("FLSA").[12]. In siding with administrative agency, the *Mayfield* court found persuasive that the DOL has consistently issued minimum salary rules for over eighty years, and during that timeframe, Congress had amended the FLSA multiple times *without* modifying, foreclosing, or otherwise questioning the Minimum Salary Rule.[13] Therefore, the Fifth Circuit held that the DOL had the statutory authority under the FLSA to promulgate the Minimum Salary Rule.[14] Shortly after the court's decision in *Mayfield*, a judge in the Southern District of Texas cited *Mayfield* in denying a similar challenge to the DOL's rulemaking authority to establish minimum salary levels.[15]

Other lawsuits have been filed challenging the DOL's more recent 2024 rule increasing the minimum salary levels for white-collar exemptions from overtime ("2024 Rule"). The DOL's 2024 Rule establishes higher minimum salary levels and increased the salary level to $844/week (from $684/week) effective July 1, 2024, with a second increase to $1,128/week, effective January 1, 2025. One of the lawsuits challenging the DOL's authority was filed in the Tenth District (Colorado)[16] and two other lawsuits were filed in the Fifth District (Texas).[17] Should one or more of these cases wind their way on appeal to the Supreme Court, at least one justice has expressed being receptive to the argument that the FLSA does not grant authority to the DOL to establish a minimum salary requirement for the white-collar exemptions.[18]

In a non-employment law case, the Sixth Circuit upheld a challenge to a 2021 rule issued by the Department of Health and Human Services that requires Title X grant recipients to provide neutral, nondirective counseling and referrals for abortions to patients who request it, partly because it determined that an earlier case that decided the same question to be persuasive, despite its reliance on *Chevron*.[19] In so holding, the Sixth Circuit specifically addressed and followed the Supreme Court's directive that not all earlier cases relying on *Chevron* are bad law.[20]

Despite these assurances that not all pre-*Loper Bright* decisions are at risk, scholars note that the Court's statements about the precedential effect of cases applying *Chevron* deference are *dicta*[21] and are not binding themselves.[22] As luck would have it (or not, depending on your perspective), the Fifth Circuit will have an opportunity to address this issue in *United Natural Foods v. NLRB*, in which the court will examine whether the National Labor Relations Board (NLRB) has the authority to dismiss its own complaint after a motion for summary judgment has been filed.[23] The Fifth Circuit will either follow the precedent of *NLRB v. United Food and Com. Workers Union, Loc. 23 (UFCW)* – which relied upon *Chevron* to uphold a similar rule – or instead decide that the NLRB exceeded its statutory authority.

While the ultimate impact of *Loper Bright* will not be known for years, it is reasonable to anticipate new administrative rules will face increased legal challenges. In fact, in *Kansas v. United States Department of Labor*, the Southern District of Georgia recently struck a DOL rule which provided collective bargaining rights to agricultural migrant workers employed under the H-2A visa program.[24] The rule was stricken, because the court found the rule created new rights and new law that Congress did not create.[25] And one author's review of decisions issued after *Loper Bright* does not bode well for federal agencies, with agencies losing in twenty-two rulings.[26]

As a consequence of potentially unfavorable outcomes and enhanced scrutiny, federal agencies may be forced to modify their internal processes for crafting new rules and take a more deliberative and conservative approach

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to rulemaking. Agencies and those who challenge their actions, will need to be mindful of a judge's judicial philosophy on statutory construction such that forum selection will become of greater strategic consideration.

Keep in mind that *Loper Bright* applies to a court's review of federal agencies and at the state level, *Chevron*-style deference may or may not be available, depending on the jurisdiction. The Ohio Supreme Court eliminated mandatory *Chevron*-style deference for state agencies in 2022 with its decision in *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*. [27] Like the Court in *Loper Bright,* the Ohio Supreme Court relied on the exclusive power of the judiciary to say what the law is in holding, "It is never mandatory for a court to defer to the judgment of an administrative agency. Under our system of separation of powers, it is not appropriate for a court to turn over its interpretative authority to an administrative agency…[and] the weight to be given the agency interpretation depends on its persuasiveness."[28]

Depending on their practice area, attorneys may interact with administrative agencies more than they interact with the judicial branch. Employment lawyers, for example, often represent clients with disputes involving regulatory agencies or tha t require exhaustion of administrative remedies.[29] With *Loper Bright* and the demise of *Chevron* deference, attorneys might consider under certain circumstances challenging an administrative agency's authority where the agency's interpretation is not clearly supported by the authorizing statute.

ENDNOTES

1 *Loper Bright Enters. v. Raimondo*, -- U.S. --, 144 S.Ct. 2244 (2024).
2 *Id.* at 2273 (2024).
3 *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984).
4 *Id.* at 842-43.
5 *Loper Bright*, 144 S.Ct. at 2273.
6 *Id.* at 2262.
7 *Id.* at 2261, quoting *U.S. v. Morton Salt Co.*, 338 U.S. 632, 644 (1950).
8 *Id.* at 2263 (internal citations and quotations omitted).
9 *Id.* at 2273.
10 *Mayfield v. United States Dept. of Labor*, No. 23-50724, 2024 WL 4142760 (5th Cir. Sept. 11, 2024).
11 Also known as the "EAP" exemptions, in reference to the Executive, Administrative and Professional employee exemptions from overtime under the FLSA.
12 *Id.* at *2.
13 *Id.* at *6.
14 *Id.* at *6.
15 *Loyda Alvarez v. NES Global LLC*, No. 4:20-cv-01933, 2024 WL 4309989, *5 (S.D. Tex. Sept. 26, 2024).
16 *Association of Christian Schools International v. DOL*, No. 1:24-cv-02618 (D.D.C. Sept. 17, 2024)
17 *Texas v. Department of Labor*, 4:24-cv-00499-SDJ (E.D. Tex.), filed June 3, 2024; the court enjoined the DOL from enforcing the 2024 Rule against the State of Texas as an employer, but denied a nationwide injunction.
18 *Helix Energy Solutions Gp., Inc. v. Hewitt*, 598 U.S. 39, 67-68 (2023) (Kavanaugh, J., dissenting).
19 *Tennessee v. Becerra*, 117 F.4th 348, 363-64 (6th Cir. 2024).
20 *Id.* at 364.
21 *Dicta*, or *obiter dictum*, are statements in a decision that are not necessary to decide the issue at hand and have no binding or precedential effect on other courts. *See Stein v. Kaiser Found. Health Plan, Inc.*, 115 F.4th 1244, 1248 (9th Cir. 2024) (Forrest, C.J., concurring). So, because SCOTUS did not need to go out of its way to state prior decisions relying on *Chevron* are still good law in order to actually decide whether *Chevron* itself need be overruled, that statement is not actually binding on any lower court or a future SCOTUS decision.
22 Robert Iafolla, *Labor Board Ruling Can't Survive Chevron's Death, Company Says*, Bloomberg Law (Sept. 9, 2024), https://news.bloomberglaw.com/daily-labor-report/labor-board-ruling-cant-survive-*Chevron*s-death-company-says.
23 *United Natural Foods, Inc. v. NLRB*, No. 21-60532, 2024 WL 4120431 (5th Cir. Sept. 6, 2024) (supplemental brief of United Natural Foods, Inc.).
24 *Kansas v. United States Department of Labor*, No. 2:24-cv-76, 2024 WL 3938839, *9 (S.D. Ga. Aug. 26, 2024).
25 *Id.* at *8.
26 Twenty-one of those rulings were handed down by judges appointed by Republican administrations. See Robert Iafolla, *GOP-Picked Judges Take Hard Line on Regulations Post-Chevron*, Bloomberg Law (Sept. 4, 2024), https://news.bloomberglaw.com/daily-labor-report/gop-picked-judges-take-hard-line-on-rules-after-*Chevron*s-demise.
27 2022-Ohio-4677 (7-0 decision).
28 Id., ¶ ¶ 42-43, and 47.
29 See, e.g., The Employment Law Uniformity Act, R.C. 4112.08, requires exhaustion of administrative remedies with the Ohio Civil Rights Commission before filing suit

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Ohio General Assembly Addresses Recent Supreme Court Decisions

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The Ohio General Assembly recently passed House Bill 179, a bill which simultneously addresses the application of the claim tolling statute in R.C. 2305.15 and clarifies the application of vicarious liability in the context of professional liability. It went into effect October 24, 2024.

The first portion of House Bill 179 addresses the application of the claim tolling statute in R.C. 2305.15, which extends the applicable statute of limitations when a defendant is out of state, or attempts to conceal themselves or avoid service. This is in response to a December 2022 decision by the Ohio Supreme Court, *Elliot v. Durrani*, 2022-Ohio-4190. In *Elliot*, the Court concluded that the period of time a defendant is out of the country can be used to toll the running of the statute of repose. House Bill 179 vitiates the *Elliot* decision and inserts language into the statute clarifying that the tolling statute does not apply to the medical claim statute of repose, or any other statute of repose contained within the Revised Code.

The latter portion of this bill enacts R.C. 2307.241, a provision addressing vicarious liability. The newly enacted R.C. 2307.241 provides that, in the context of a vicarious liability relationship, an injured party may bring suit against either the primarily liable agent, the secondarily liable principal, or both. The statute further provides that the primarily liable agent is not a necessary party to any tort action brought against the secondarily liable principal, meaning that an employer, master, or principle may be sued for the conduct of its agent regardless of whether suit is also brought against the employee, servant, or agent, and vice versa.

The statute creates an exception, however, in cases of professional liability, including actions brought against attorneys, physicians, podiatrists, dentists, and chiropractors, in which case the primarily liable party (the attorney, physician, etc.) would then be a necessary party to the action.

Under the statute, it appears that a plaintiff need not sue an employee or agent individually in order to impose vicarious liability on an employer or principal unless that agent is a professional. In those cases, where there are vicarious liability claims against a hospital or law firm, those professionals are still required to be named as parties.

This newly enacted statute clarifies the application of vicarious liability following the Supreme Court of Ohio's decision in *Clawson v. Hts. Chiropractic Physicians L.L.C.,* 2022-Ohio-4154, which called into question whether other healthcare professionals, such as nurses, technicians, or aides were necessary parties to medical malpractice claims. Given the language utilized by the General Assembly, it is likely that the application of this provision will be applicable prospectively and will not impact pending cases.

Some appellate courts – including most recently the Eighth District Court of Appeals – have held that

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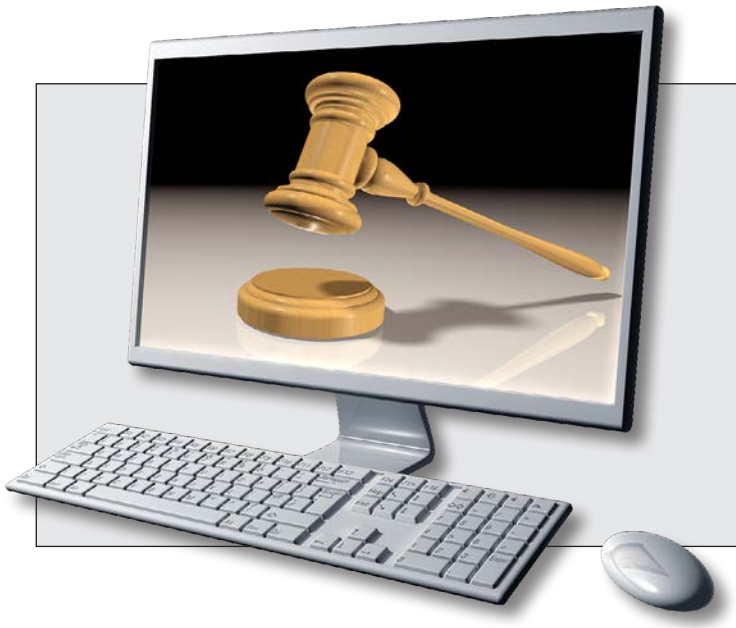
Clawson, even absent the recent legislation, does not require an agent to be joined as a party, save for those cases involving professional practitioners like physicians and attorneys. See, *Orac v. Montefiore Found.*, 8th Dist. Cuyahoga No. 113514, 2024-Ohio-4904, ¶ 41 (reversing summary judgment based on *Clawson*).

To date, one appellate court – the Seventh District Court of Appeals – has issued a preliminary decision holding that the statute is *not* retroactive, as it relates to the portion overruling **Elliot**. See, *Pelletier v. Mercy Health Youngstown, LLC*, 7th Dist. Mahoning No. 21 MA 0110, 2024-Ohio-3397. Specifically, the Seventh District found that the statute did not contain express language making it retroactive, and thus declined to apply it to a pending matter.

The Bill was passed with unanimous, bipartisan support and was sponsored by State Representatives Adam Mathews and Brian Stewart.

Brianna Prislipsky, Esq., is an attorney in Reminger Co., LPA's Cleveland office. She focuses her practice primarily on appellate law and developing legal issues, with special attention to evolving jurisprudence around Ohio's medical claim statute of repose."



Puttin' on the Writs[1]

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Fred Astaire, Park Avenue, appellate writs? Each is, in its own way . . . extraordinary. What are the extraordinary writs? Mandamus, procedendo, prohibition, habeas corpus, and quo warranto. (Now say that five times fast!)

What makes these writs so extraordinary? They often allow a party to skip over the trial court and go straight to a higher court — to a court of appeals or even directly to the Ohio Supreme Court. The Ohio Constitution bestows on the Ohio Supreme Court and on Ohio's courts of appeals concurrent, original jurisdiction over these five special writs. Ohio Const. Art. IV § 2(B)(1) and § 3(B)(1).

Each of these writs provides a remedy to a litigant when a remedy would otherwise be unavailable or inadequate. In addition to these writs, there is a seldom used "other writ," which completes this extraordinary family. R.C. 2503.40 (applicable only to Ohio Supreme Court).

While extraordinary writs are, well, extraordinary, and therefore may not be something you use or think about on a daily basis, they are important tools to have and to know how to use and defend against. Below is a brief refresher on each of the extraordinary writs with examples of how they can be used.

Writ of Mandamus

Perhaps the most common writ, the writ of mandamus is issued to compel a public official to perform a required act; it is not available to enforce private rights against persons who are not public officials. *State ex rel. Russell v. Duncan*, 64 Ohio St.3d 538, 597 N.E.2d 142 (1992). Mandamus lies to compel the exercise of discretion, but it cannot be used to control how discretion is exercised. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 228 N.E. 2d 631 (1967); *State ex rel. Johnstone v. Cincinnati*, 165 Ohio St. 3d 178, 2021-Ohio-3393. In other words, mandamus lies to force a public official to make a decision that the official has a duty to make—but it cannot compel the outcome of that decision. To obtain a writ of mandamus, one must prove:

1) the requesting party has a clear legal right to the relief requested;
2) the respondent is under a clear legal duty to perform that act; and
3) the requesting party has no plain and adequate remedy at law.

State ex rel. Partis v. Warren City Bd. of Health, 63 Ohio St.3d 777, 1992-Ohio-131; *State ex rel. Shie v. Ohio Adult Parole Auth.*, 167 Ohio St. 3d 450, 2022-Ohio-270, 167 Ohio St.3d 450.

A writ of mandamus can be sought in the common pleas court, the court of appeals, or in the Ohio Supreme Court. R.C. 2731.02.

Common uses of the writ of mandamus include:

- Compelling a government agency to provide records under the Ohio Public Records Act. For example:
  - The president of East Cleveland City Council learned that the mayor and finance director of East Cleveland were spending money without authorization from

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city council, including COVID relief funds that had not been appropriated by the council. The president of city council was refused access to documentation showing how the mayor and finance director spent certain funds. The Ohio Supreme Court granted the president's writ of mandamus, compelling the mayor and finance director to provide certain documentation. State ex rel. *Stevenson v. King*, 169 Ohio St.3d 61, 2022-Ohio-3093.

- A physician facing disciplinary action by the State Medical Board was refused an unredacted copy of the records relating to the Board's disciplinary investigation. The Ohio Supreme Court granted the physician's writ of mandamus, compelling the Board to provide some of the requested records. *State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio St.3d 497, 2010-Ohio-5995.

- Compelling a state official to act. For example:

  - Prospective candidates for an upcoming primary election brought a writ of mandamus compelling the Secretary of State to instruct the county board of elections to accept their declarations. The Ohio Supreme Court found that the candidates declarations were timely, and consequently, granted their writ and ordered the Secretary of State to instruct the county board of elections to accept their declarations. State ex rel. *DeMora v. LaRose*, 171 Ohio St.3d 242, 2022-Ohio-2173.

  - The Secretary of State has a statutory duty to "summarily" break tie votes submitted by a board of elections. When several months passed and the Secretary of State had not broken the 2-2 tie of the board of elections regarding whether a state senator was a resident of his district and, therefore, entitled to vote there in the upcoming general election, the Ohio Supreme Court issued a writ of mandamus ordering the Secretary of State to break the tie within seven days. *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 119, 2009-Ohio-4805.

- Compelling a city or county official to act. For example:

  - An individual sought to place a referendum on a ballot for the election in November. The city finance director for Maumee, Ohio refused to transmit the referendum to the County Board of Elections. The Ohio Supreme court granted the individual's writ of mandamus, ordering the finance director of Maumee to transmit the referendum to the County Board of Elections. *State ex rel. LaChapelle v. Harkey*, 173 Ohio St.3d 76, 2023-Ohio-2723.

  - A county engineer did not act on a property owners' request to resolve a lot line dispute caused by a survey conducted by a county engineer after the completion of a county sewer improvement project. The common pleas court granted the property owner a writ of mandamus and the court of appeals affirmed, in part, ordering the county engineer to comply with R.C. 315.28 *et seq.* (requiring the engineer to survey any tract of land when the boundaries became uncertain). *State ex rel. Clifton v. Schelling* (1999), 132 Ohio App.3d 594, 725 N.E.2d 754.

- Challenging a state agency's discretionary decision when there is no right to appeal such a decision. *Ohio Academy of Nursing Homes v. Ohio Department of Job and Family Services*, 114 Ohio St.3d 14, 2007-Ohio-2620 (listing many illustrative cases where mandamus has been used to challenge an agency's decision because no direct appeal is available).

- Compelling job promotion or the payment of wages or benefits for a civil service or other public employee. For example:

  - The Ohio Supreme Court issued a writ of mandamus, ordering a village to promote a city police patrolman to the position of lieutenant,

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where: (1) the patrolman received the highest score on a promotional examination conducted by the police department, and (2) under R.C. 124.44, the highest ranked applicant from a merit examination eligibility list must be the person promoted to any vacancy, and (3) the patrolman had no adequate remedy at law. *State ex rel. Lightfield v. Indian Hill*, 69 Ohio St.3d 441, 633 N.E.2d 524 (1994).

- A police lieutenant who met the two-year time-in-grade requirement filed a petition for a writ of mandamus to compel the city to promote him after the city promoted an officer who did not meet the requirement. The Ohio Supreme Court denied the writ of the lieutenant, who had signed a collective-bargaining agreement, because the lieutenant had an adequate remedy at law under the collective bargaining agreement's grievance process. *State ex rel. Casey v. Brown*, 172 Ohio St.3d 655, 2023-Ohio-2264.

- A fiancé for an employee of the Industrial Commission of Ohio applied for death benefits after the employee died in the course of his employment. The Industrial Commission denied the fiancée's application for death benefits and the fiancé filed an action in mandamus, seeking a writ to compel the Commission to reverse or vacate the order. The Tenth District Court of Appeals granted a limited writ, directing the commission to vacate its decision and determine whether the fiancée has established that she is a family member pursuant to Ohio statute. *State ex rel. McDonald v. Indus. Comm'n, 2021*-Ohio-4494, ¶ 33, 182 N.E.3d 482, 496, *aff'd*, 2023-Ohio-1620, ¶ 33, 172 Ohio St. 3d 618, 226 N.E.3d 904.

- The Ohio Supreme Court issued a writ of mandamus compelling the City of Cleveland to pay its employees the difference between the prevailing wage and their actual wage during the relevant period. *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. City of Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831.

Writ of Procedendo

The writ of procedendo is similar to mandamus, but its application is usually limited to compelling a lower court to act or exercise jurisdiction while mandamus is usually used to compel public officers to perform their duties. Judge Mark P. Painter, Andrew S. Pollis, Ohio Appellate Practice § 10:50 (last updated November 2023). To obtain a writ of procedendo, one must show:

1) a clear legal right to require the court to proceed;
2) a clear legal duty on the part of the lower court to proceed; and
3) no adequate remedy in the ordinary course of law. State ex rel. Bd. of State Teachers Ret. Sys. v. Davis, 113 Ohio St.3d 410, 2007-Ohio-2205; State ex rel. Ames v. Pokorny, 164 Ohio St.3d 538, 2021-Ohio-2070.

Common uses of the writ of procedendo include:

- Compelling a lower court to act when it has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. For example:

  - A litigant filed a complaint for a writ of procedendo, seeking an order requiring a lower court judge to order an eviction on behalf of the litigant in a case pending before that judge. The Eighth District Court of Appeals, finding the judge unnecessarily delayed judgment, granted the writ. S*tate ex rel. Fischer Asset Mgmt., LLC v. Scott*, 2023-Ohio-3891, ¶ 10 (8th Dist. 2023).

  - Indigent litigants filed a writ of procedendo seeking to compel a probate judge to proceed with their adoption petition where the proceedings had been languishing for a long period of time and the probate judge had not appointed counsel for the litigants. The Ohio Supreme Court granted the writ and ordered the probate judge to appoint the litigants

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counsel. *State ex rel. T.B. v. Mackey*, 168 Ohio St.3d 675, 2022-Ohio-2493.

- Where a jury did not answer interrogatories on punitive damages and breach of contract claims, nor did its general verdict decide those issues, the Ohio Supreme Court affirmed the appellate court's grant of a writ of procedendo to compel the common pleas court to conduct a retrial. *State ex rel. Bd. of State Teachers Ret. Sys. v. Davis*, 113 Ohio St.3d 410, 2007-Ohio-2205.

Writ of Prohibition

The writ of prohibition is used to prevent a tribunal or lower court from usurping or exercising judicial powers or functions where the tribunal or lower court is about to exceed its jurisdiction. Judge Mark P. Painter, Andrew S. Pollis, Ohio Appellate Practice § 10:40 (last updated November 2023). Prohibition restrains the unauthorized use of judicial power and, thus, is the opposite of procedendo. To obtain a writ of prohibition, one must prove:

1) the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power;
2) the exercise of that power is unauthorized by law; and
3) denying a writ will result in injury for which no other adequate remedy exists in the ordinary course of law.

State ex rel. Dayton Newspapers, Inc. v. Phillips, 46 Ohio St.2d 457, 351 N.E.2d 127 (1976); *State ex rel. Allenbaugh v. Sezon*, 171 Ohio St. 3d 573, 2023-Ohio-1754, reconsideration denied, 170 Ohio St.3d 1508, 2023-Ohio-2664.

Common uses of the writ of prohibition include:

- Preventing the enforcement of a trial court order that excludes public access to court proceedings. For example:

  - A writ of prohibition provided an appropriate remedy to prevent the enforcement by a trial court of an order restricting public access to documents. The order was overbroad and not supported by evidence. *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St.3d 292, 2022-Ohio-3580.

  - A Cincinnati police officer using the pseudonym "M.R." filed a complaint alleging that several people, whom he named as defendants, made false claims that he is a white supremacist. He also filed a TRO and an affidavit in support. Relator, a Cincinnati newspaper, filed a writ of mandamus and of prohibition to compel the lower court judge to grant full access to the police officer's affidavit and to prevent the judge from continuing to allow the officer to use a pseudonym. The Ohio Supreme Court granted a writ of prohibition, preventing the judge from allowing the police officer to proceed using a pseudonym. *State ex rel. Cincinnati Enquirer v. Shanahan*, 166 Ohio St. 3d 382, 2022-Ohio-448.

  - A writ of prohibition, rather than mandamus, was an appropriate remedy to prevent a trial court from enforcing a post-verdict gag order in a highly publicized case. *State ex rel. Cincinnati Post v. Court of Common Pleas of Hamilton County*, 59 Ohio St.3d 103, 570 N.E.2d 1101 (1991).

- Prohibiting or compelling quasi-judicial actions by county boards of elections. For example:

  - Relators, a village and its mayor, filed a protest to keep a petition off the November 2022 ballot. The Board of Elections (BOE) denied the protest and certified the petition to the ballot. The Relators sought a writ of prohibition seeking a reversal of the BOE's certification. The Ohio Supreme Court granted the writ on the grounds that (1) the BOE exercised quasi-judicial authority when it decided a protest after conducting a hearing, (2) the exercise

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of that power was not authorized by Ohio law, and (3) no adequate remedy was available at law due to the immanency of the November election. *State ex rel. Moscow v. Clermont Cnty. Bd. of Elections*, 2022-Ohio-3138, 169 Ohio St.3d 161.

- City mayor sought a writ of prohibition to prevent a county board of elections (BOE) from placing a mayoral recall issue on the ballot because the petitions supporting the recall did not comply with Ohio law. The Ohio Supreme Court granted the writ on the grounds that: (1) the BOE exercised quasi-judicial authority by denying the mayor's protest after conducting a hearing, (2) the election was sufficiently imminent that the mayor lacked an adequate remedy at law, and (3) the recall petition did not comply with and the BOE clearly disregarded applicable Ohio law. *State ex rel. Finkbeiner v. Lucas County Bd. of Elections*, 122 Ohio St.3d 462, 2009-Ohio-3657.

- Preventing a trial court from exercising jurisdiction over an issue that is the subject of a pending appeal. *State ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 355, 2010-Ohio-252; S*tate ex rel. Bohlen v. Halliday*, 164 Ohio St.3d 121, 2021-Ohio-194.

- Preventing a judicial officer who has lost jurisdiction from continuing to exercise it. For example:

  - A writ of prohibition was sought to prevent the trial court from proceeding on request for attorney fees after limited remand from court of appeals. The trial court lost jurisdiction after entering final judgment, and the court of appeals mandate did not give the trial court jurisdiction to entertain the request for attorneys' fees that accrued after the final judgment. The Ohio Supreme Court granted the writ of prohibition. *State ex rel. Mather v. Oda*, Slip Opinion No. 2023-Ohio-3907.

  - An unqualified voluntary dismissal deprives a trial court of jurisdiction to resolve a dispute over the terms of a settlement agreement. *State ex rel. Northpoint Properties, Inc. v. Markus*, 2003-Ohio-5252 (8th Dist.).

- Preventing a second court from exercising concurrent jurisdiction over a matter that is already the subject of litigation between the parties. *State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 476 N.E.2d 1060 (1985).

A writ of prohibition will not be granted when there is a patent and unambiguous lack of jurisdiction:

- Relator sought a writ of prohibition to prevent a lower court judge from exercising jurisdiction over an action that was transferred from the municipal court. The Supreme Court of Ohio granted the writ, finding that the judge patently and unambiguously lacked jurisdiction because the common pleas court had no basis on which to transfer the case. *State ex rel. State Farm Mut. Ins. Co. v. O'Donnell,* 163 Ohio St. 3d 541, 2021-Ohio-1205.

- A driver sought a writ of prohibition to prevent city from conducting an administrative hearing to adjudicate her liability for violating a municipal traffic ordinance. The Ohio Supreme Court granted the writ of prohibition holding that a hearing officer patently and unambiguously lacked jurisdiction to carry out the City of Toledo's red light and speeding camera civil enforcement system under Ohio law. *State ex rel. Magsig v. Toledo*, 160 Ohio St. 3d 342, 2020-Ohio-3416.

Writ of Quo Warranto

The writ of quo warranto is issued against a person or corporation for usurpation, misuse, or abuse of public office or corporate office or franchise. R.C. Chapter 2733. To obtain a writ of quo warranto, one must show:

1) that the office is being unlawfully held and exercised by respondent; and

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2) that the requesting party is entitled to the office (Note: this second requirement is not required in order to oust the office-holder).

State ex rel. Deiter v. McGuire, 119 Ohio St.3d 384, 2008-Ohio-4536; *State ex rel. Bates v. Smith*, 147 Ohio St. 3d 322, 2016-Ohio-5449.

Common uses of the writ of quo warranto include:

- Asserting a right to a public office unlawfully held and exercised by another brought under R.C. 2733.01, 2733.06, and 2733.08. For example:

  - The Ohio Supreme Court granted the writ, compelling the removal of the sitting township trustee and appointing the rightful holder of the position. *State ex rel. Bates v. Smith*, 147 Ohio St.3d 322, 2016-Ohio-5449.

  - Ohio Supreme Court partially granted the writ, compelling removal of the sitting clerk-treasurer, but refusing petitioner's request for appointment to the office. *State ex rel. Myers v. Brown*, 87 Ohio St.3d 545, 2000-Ohio-478.

- Challenging the title or election of an officer of a private corporation, brought under R.C. 2733.02 or 2733.15. For example:

  - R.C. 2733.02 permits the state to pursue an action in quo warranto against a corporation if that corporation has failed in certain respects to perform its essential functions. The Attorney General brought an action for writ of quo warranto seeking to dissolve a corporation. The Ohio Supreme Court found that evidence showed that the corporation failed to maintain the records of its members and failed to comply with corporate formalities, justifying dissolution of the corporation through quo warranto. *State ex rel. DeWine v. Omar Ibn El Khattab Mosque, Inc.*, 156 Ohio St. 3d 513, 2018-Ohio-5112, *judgment vacated on reconsideration sub nom. State ex rel. Yost v. Omar Ibn El Khattab Mosque, Inc., 156 Ohio St.3d 523, 2019-Ohio-1958.*

  - Relator sought a writ of quo warranto alleging he was wrongfully and lawfully denied his seat as a director of a family-owned corporation and the office of president of the corporation, claiming that enough illegal votes were received and legal votes rejected to change the election results. The appellate court granted a writ of quo warranto to oust the illegally-elected directors and officers. *State ex re. Babione v. Martin*, 97 Ohio App.3d 539, 647 N.E.2d 168 (1994).

Writ of Habeas Corpus

The writ of habeas corpus is used to inquire into the cause of an allegedly unlawful imprisonment or deprivation of custody. Although habeas corpus proceedings are commonly thought of in the criminal context, habeas corpus is essentially a civil remedy for the enforcement of the right to personal liberty. In addition to the Ohio Supreme Court and courts of appeals, common pleas courts also have original jurisdiction to entertain habeas corpus actions. R.C. 2725.02. To obtain a writ of habeas corpus, one must show:

1) there is an unlawful restraint of a person's liberty; and
2) there is no adequate remedy in the ordinary course of law.

Johnson v. Timmerman-Cooper, 93 Ohio St.3d 614, 2001-Ohio-1803; *State ex rel. Norman v. Collins*, 170 Ohio St. 3d 484, 2023-Ohio-975.

Common uses of the writ of habeas corpus include:

- Prisoner petitions. For example:

  - Inmate filed a petition for habeas corpus challenging the amount of his pre-trial bond of $1,000,000 by providing evidence that the bail amount was

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excessive. The Ohio Supreme Court agreed with the petitioner, granted the writ, and reduced his bail bond to $200,000. *Mohamed v. Eckelberry*, 162 Ohio St.3d 583, 2020-Ohio-4585.

- Prisoner was a minor present during a robbery in which a participant shot and killed a store clerk. The minor/prisoner was bound over from juvenile court and prosecuted in the general division and, after her guilty plea, found guilty of felonious assault and sentenced to 10 years in prison. The minor/prisoner's petition asserted that she should not have been bound over. The Ohio Supreme Court agreed and granted the writ of habeas corpus. *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 2001-Ohio-1803.

- Child custody. For example:

  - In order to prevail on a petition for a writ of habeas corpus in a child custody case, the petitioner must establish that (1) the child is being unlawfully detained, and (2) the petitioner has the superior legal right to custody of the child. *Lee v. Weir*, 150 Ohio St. 3d 110, 2016-Ohio-8104; *Pegan v. Crawmer*, 76 Ohio St.3d 97, 1996-Ohio-419.

The "Other Writ"

A creature of statute under R.C. 2503.40, the "other writ" confers original jurisdiction in the Ohio Supreme Court to issue "other writs not specially provided for and not prohibited by law, when necessary to enforce the administration of justice."

While there are no common uses of the "other writ" (as it is rarely sought and rarely granted), it has been used as follows:

- Emergency elections matters. For example:

  - "Other writ" cannot be requested as a substitute to a writ of mandamus. *State ex rel. Lucas Cnty. Republican Party Exec. Commt. v. Brunner*, 125 Ohio St.3d 427, 2010-Ohio-1873; see also *State ex rel. Evans v. Scioto Cnty. Common Pleas Ct.*, 155 Ohio St.3d 41, 2018-Ohio-4696 ("But we have 'never granted an other writ pursuant to R.C. 2503.40 as a substitute for' a writ of prohibition or mandamus.").

  - Ohio Supreme Court issued an "other writ" directing a county board of elections to impound and not count ballots of a merger vote pending the court's resolution of a discretionary appeal. *State v. Granville Twp. Bd. of Trustees,* 77 Ohio St.3d 1215, 671 N.E.2d 1277 (1996).

Writs are tools every litigator should know about. And, like all tools, they work best when you know how to use them!

ENDNOTES

1 This is an updated version of an OACTA article that was published more than a decade ago.

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