The Supreme Court of Ohio

# CASE ANNOUNCEMENTS

## May 22, 2024

**[Cite as *05/22/2024 Case Announcements #14*, 2024-Ohio-1936.]**

## MERIT DECISIONS WITHOUT OPINIONS

**2024-0551. State ex rel. Yost v. Holbrook.**

In Mandamus and Prohibition. On relators' emergency motion for writ of prohibition or mandamus. Motion denied. Madeline Moe et al.'s motion to intervene as respondents denied. Writ denied.

Donnelly and Stewart, JJ., concur.

DeWine, J., concurs, with an opinion joined by Fischer and Deters, JJ.

Kennedy, C.J., concurs in part and dissents in part and would grant the emergency motion and issue an alternative writ.

Brunner, J., concurs, with an opinion, and would deny the motion to intervene as moot.

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**DEWINE, J., concurring.**

**{¶ 1}** I concur in the majority's decision to deny the emergency motion and deny the requested writs. The state has failed to make the necessary showing to obtain the extraordinary remedy of a writ of prohibition or mandamus. But I write separately to note that this case presents important issues about the propriety of a common-pleas-court judge of a single county issuing interim relief in the form of a statewide injunction that enjoins the application of a state legislative enactment, not only as necessary to provide interim relief to the parties, but also in its entirety and as applied to every citizen in the state.

**{¶ 2}** At issue is an injunction[1] issued by a judge of the Franklin County Court of Common Pleas. The injunction is very broad. It enjoins enforcement of the Ohio Saving Adolescents from Experimentation Act, 2024 Sub.H.B. No. 68, not just as the law applies to the plaintiffs but as it applies to the entire state. The two plaintiffs in this case challenge the law on the basis that it will prevent them from taking puberty-blocking drugs. But the order is not limited to those provisions of the law; rather, it sweeps in the entire enactment, including provisions about gender-transition surgeries, parental rights, school athletics, and administration of cross-sex hormones. *See, e.g.*, R.C. 3109.054 ("parental rights"); R.C. 3129.02(A) (prohibiting physicians from providing "gender transition" services that include "gender reassignment" surgeries, "cross-sex hormone[s]," or "puberty-blocking" drugs); R.C. 3313.5320 (requiring "[s]eparate teams" for biologically male and biologically female students).

**{¶ 3}** The state has chosen to challenge the injunction by filing a lawsuit in this court, asking us to grant an extraordinary writ of mandamus or prohibition. "We reserve the use of extraordinary writs for rare cases." *Ohio High School Athletic Assn. v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶ 6. Such writs are "granted in limited circumstances with great caution and restraint." *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001).

**{¶ 4}** A prerequisite for an extraordinary writ is the lack of an adequate remedy at law. *See State ex rel. Kerns v. Simmers*, 153 Ohio St.3d 103, 2018-Ohio-256, 101 N.E.3d 430, ¶ 5. That means that an extraordinary writ is not available when a party may challenge a decision through an appeal or by requesting a stay from a higher court. The state, however, does not develop an argument that it lacks an adequate remedy at law. Instead, it seeks to rely on a narrow exception to the adequate-remedy requirement that applies "where there is a patent and unambiguous lack of subject matter jurisdiction." *State ex rel. Ohio Edison Co. v. Parrott*, 73 Ohio St.3d 705, 707, 654 N.E.2d 106 (1995).

**{¶ 5}** The common pleas court clearly had subject-matter jurisdiction over the underlying lawsuit. Under the Ohio Constitution, the common pleas courts have "original jurisdiction over

1. The other concurring opinion attaches significance to the fact that the court's order was styled as a temporary restraining order. But, of course, a temporary restraining order is an injunction. And in any event, a temporary restraining order may not extend beyond 28 days unless the adverse party consents. *See* Civ.R. 65(A). Here, because the state had notice and because the court extended its order beyond 28 days, the order constitutes a preliminary injunction. *See Atwood v. Judge*, 63 Ohio App.2d 94, 102, 409 N.E.2d 1022 (7th Dist.1977).

all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law." Ohio Constitution, Article IV, Section 4(B). A common pleas court is a "court of general jurisdiction, with subject-matter jurisdiction that extends to 'all matters at law and in equity that are not denied to it.' " *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20, quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559 (1891).

**{¶ 6}** The problem for the state is that the argument it presents in its emergency motion does not challenge the trial court's subject-matter jurisdiction. Instead, the state argues that the trial court lacked jurisdiction because it "exceeded its judicial authority." But our caselaw clearly provides that "the fact that [a judge] may have exercised [his] jurisdiction erroneously does not give rise to extraordinary relief by prohibition," *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 656, 646 N.E.2d 1110 (1995); *see also Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, at ¶ 17 (denying writ when a trial judge allegedly had erred "in exercising the court's jurisdiction"); *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 10 ("There is a distinction between a court that lacks subject-matter jurisdiction over a case and a court that improperly exercises that subject-matter jurisdiction once conferred upon it").

**{¶ 7}** Although we deny the relief requested today, this case raises an important issue: Is it appropriate for one judge in a single county to issue a statewide injunction that goes beyond what is necessary to provide interim relief to the parties in the case? The United States Supreme Court recently dealt with a similar issue on an application to stay a district court's injunction that had enjoined enforcement of any provision of a newly enacted Idaho law regulating medical services designed to alter a child's sex. *See Labrador v. Poe*, __ U.S. __, 144 S.Ct. 921, __ L.Ed.2d __ (2024). The full Court granted the application in part, modifying the universal injunction to apply only to the parties in the lawsuit and only to the services at issue. *Id.* at 921. A concurring opinion—joined by two other justices—explained that "[o]rdinarily, injunctions * * * may go no further than necessary to provide interim relief to the parties."[2] *Id.* (Gorsuch, J.,

2. The other concurring justice attempts to dismiss this discussion of *Labrador* as being based on the concurrence of "one justice" (though it was actually joined by two others). What she glosses over is that the Court's modifying the lower court's injunction was issued by the full Court, with only three justices noting their dissents. That dissolved the district court's injunction "except as to the provision to the plaintiffs of the treatments sought below," *Labrador* at __, 144 S.Ct. at 921—in effect, granting exactly the relief that the state seeks in this case. Justice Jackson was the only dissenting justice in *Labrador* to write. She did not accuse her colleagues of issuing a "political statement," concurring opinion of Brunner, J., ¶ 26, or invoke an apocalyptic painting. Instead, she explained that "[w]hether federal courts have the power to issue 'universal injunctions' is 'an important question that could warrant our review

concurring). The opinion lamented that universal injunctions "circumvent normal juridical processes" and warned that such orders "effectively transform[] a limited dispute between a small number of parties focused on one feature of a law into a far more consequential referendum on the law's every provision as applied to anyone." *Id.* at 927 (Gorsuch, J., concurring).

**{¶ 8}** The other concurring opinion in this case offers a full-throated defense of universal injunctions and fulminates against this court ever taking up the issue. Unlike the other concurring justice, I will reserve judgment until we are presented with a case that properly presents the issue and we have had the benefit of adversarial briefing. I simply note that the suggestion that it is "ludicrous," concurring opinion of Brunner, J., ¶ 15, to even consider the issue is difficult to square with the serious arguments that have been presented by the state—arguments that are premised on the plain text of Civ.R.65(A) and R.C. 2727.02 and the historical limits on a court's equitable power.

**{¶ 9}** This court should address the propriety of the issuance of universal injunctions for the purpose of granting interim relief in an appropriate case.

FISCHER and DETERS, JJ., concur in the foregoing opinion.

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**BRUNNER, J., concurring.**

## I. INTRODUCTION

**{¶ 10}** I concur in the majority's decision to dismiss this case. The state has failed to make the necessary showing to obtain a writ of mandamus or prohibition. I write separately to address Justice DeWine's concurring opinion.

## II. DISCUSSION

**{¶ 11}** Justice DeWine's concurrence submits that this case presents

> important issues about the propriety of a common-pleas-court judge of a single county issuing a statewide injunction that enjoins the application of a state

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in the future,' not a foregone conclusion dictated by our precedent." *Labrador* at 937 (Jackson, J., dissenting from the grant of stay), quoting *Griffin v. HM Florida-ORL, L.L.C.*, __ U.S. __, __, 144 S.Ct. 1, 2, 217 L.Ed.2d 227 (2023) (Kavanaugh, J., statement respecting the denial of the application for stay). She explained, however, that in her view the matter should not be decided on an emergency basis. *Id.* at 938.

> legislative enactment, not only as necessary to provide interim relief to the parties, but also in its entirety and as applied to every citizen in the state.

Concurring opinion, ¶ 1.

**{¶ 12}** Civ.R. 65 is titled: "Injunctions." That rule includes requirements for seeking and issuing temporary restraining orders and preliminary injunctions. The initial order granted by respondent, Franklin County Common Pleas Court Judge Michael J. Holbrook, under Civ.R. 65(A) was a temporary restraining order with a duration of 14 days. It was not a preliminary injunction or a permanent injunction. The 14-day order was later extended until the conclusion of the hearing on the motion for preliminary injunction and the trial on the merits. In other words, this case involves a temporary restraining order, which was entered after the trial court gave notice to the parties and the parties made arguments, and which preserves the status quo until a full hearing on the preliminary injunction and the trial on the merits can be concluded. There is no permanent injunction. If there were, it could be appealed to the Tenth District Court of Appeals, which could then grant a stay of the injunction or permit it to persist pending appeal under App.R. 7.

**{¶ 13}** My colleague complains that the trial court's "injunction" of the legislative enactment at issue is "very broad." Concurring opinion at ¶ 2. But as the trial court observed:

> [p]laintiffs * * * did not limit their constitutional challenge [of the enactment] to one or more specific provisions of the bill. Rather, plaintiffs challenged the enactment of the Act in its entirety.

The breadth of the order restraining application of the enactment is attuned to the breadth of the challenge to the enactment. And the trial court found that the legislation in question—the Ohio Saving Adolescents from Experimentation Act, 2024 Sub.H.B. No. 68—was likely unconstitutional on its face for violating the single-subject rule. *See* Ohio Constitution, Article II, Section 15(D) ("No bill shall contain more than one subject, which shall be clearly expressed in its title").

**{¶ 14}** A finding of facial unconstitutionality of a legislative enactment is a high bar: "The question of the constitutionality of every law being first determined by the General

Assembly, every presumption is in favor of its constitutionality, and it must clearly appear that the law is in direct conflict with inhibitions of the Constitution before a court will declare it unconstitutional."[3] *Ohio Pub. Interest Action Group, Inc. v. Pub. Util. Comm.*, 43 Ohio St.2d 175, 331 N.E.2d 730 (1975), paragraph four of the syllabus. In considering whether to issue a temporary restraining order, the trial court found a "substantial likelihood" that the plaintiffs could demonstrate that the Ohio Saving Adolescents from Experimentation Act is unconstitutional on its face, reasoning:

> The very title of the Act references two subjects: Saving Ohio Adolescents from Experimentation [("SAFE")] and Saving Women's Sports. See Long Title. Beyond the title, the Act includes additions to R.C. Chapter 3109 Domestic Relations—Children, the creation of R.C. Chapter 3129 Gender Transition Services for Minors, as well as additions to R.C. Chapter 3313 Board of Education and R.C. Chapter 3345 State Universities—General Powers. The substance of these additions address occupational licensing and regulation related to health care, the allocation of parental rights, and athletics. Finally, it is not lost upon this Court that the General Assembly was unable to pass the SAFE portion of the Act separately, and it was only upon logrolling in the Saving Women's Sports provisions that it was able to pass.

To be clear, the trial court found a substantial likelihood that the enactment *facially* violated the single-subject rule of the Ohio Constitution. And if so, the enactment would be unconstitutional as applied to everyone. *See Wymsylo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970

3. This court has often stated that a facial constitutional challenge requires proof of unconstitutionality beyond a reasonable doubt. *See, e.g., Wymsylo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, ¶ 20, citing *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 21. But I agree with Justice DeWine's previous pronouncement that the beyond-a-reasonable-doubt standard "is an evidentiary standard that is poorly suited to the legal question whether a legislative enactment comports with the Constitution," *State v. Grevious*, 172 Ohio St.3d 171, 2022-Ohio-4361, 223 N.E.3d 323, ¶ 48 (DeWine, J., concurring in judgment only); *accord State v. Daniel*, 173 Ohio St.3d 270, 2023-Ohio-4035, 229 N.E.3d 81, ¶ 61-62 (Brunner, J., dissenting). I likewise agree with his previous observation that "while the beyond-reasonable-doubt standard is something that we have rotely pasted into constitutional opinions, there is no indication that we actually use it," *Grevious* at ¶ 63 (DeWine, J., concurring in judgment only); *see also Daniel* at ¶ 61-62 (Brunner, J., dissenting). Thus, like Justice DeWine, I consider it appropriate to use a standard that reflects the reality of how courts review constitutional questions.

N.E.2d 898, ¶ 21 ("If a statute is unconstitutional on its face, the statute may not be enforced under any circumstances").

**{¶ 15}** It is ludicrous to urge, as my colleague's concurrence appears to, that the effects of a common pleas court's temporary restraining orders and preliminary- and possibly permanent-injunction orders concerning the facial constitutionality of legislation might be limited to only the parties seeking the order. Under that view, if a statute concerning criminal prosecution for an offense were found to be unconstitutional on its face, some Ohioans would be relieved from the statute's effects while others would face prosecution under the statute, even if the statute had been enjoined for being likely unconstitutional. Ohio's common-pleas-court judges have "original jurisdiction over all justiciable matters." Ohio Constitution, Article IV, Section 4(B). No provision of the Ohio Constitution empowers this court or the legislature to diminish this unequivocal grant of power. There is also no dispute that the common pleas court had personal jurisdiction over the parties, one of whom is the State. Even though the parties seeking to enjoin the legislation are only two families in Franklin County, one of the parties against whom the injunction was obtained is the entire state of Ohio. The Ohio attorney general's request on behalf of the relators that we preclude a common pleas court from ordering the state to refrain from enforcing a facially unconstitutional law borders on being frivolous.

**{¶ 16}** Insofar as the attorney general is arguing that Civ.R. 65 limits the trial court's jurisdiction, the Ohio Constitution provides that the common pleas courts "shall have such original jurisdiction over all justiciable matters." Ohio Constitution, Article IV, Section 4(B). It is true that following that provision, the drafters added the phrase "and such powers of review of proceedings of administrative officers and agencies as may be provided by law." *Id.* But the first word in that phrase—"and"—is a conjunctive word that separates the phrase from the language "original jurisdiction over all justiciable matters." Further, there is no comma before the phrase "as may be provided by law." *Id.* "As several leading treatises explain, ' "[a] qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to all the antecedents instead of only to the immediately preceding one." ' W. Eskridge, *Interpreting Law: A Primer on How to Read Statutes and the Constitution* 67-68 (2016); *see also* 2A N. Singer & S. Singer, *Sutherland Statutes and Statutory Construction* § 47:33, pp. 499-500 (Rev. 7th Ed.2014); A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 161-162 (2012)." *Facebook, Inc. v. Duguid*, __ U.S. __, __, 141 S.Ct. 1163,

1170, 209 L.Ed.2d 272 (2021). In other words, Article IV, Section 4(B), which contains no such comma, is most appropriately read to provide that common pleas courts have (1) "original jurisdiction over all justiciable matters" and, separately, (2) "such powers of review of proceedings of administrative officers and agencies as may be provided by law," *id.*; *but see Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20.[4]

**{¶ 17}** Here, focusing on the common pleas court's power to rule on requests for temporary restraining orders and other injunctions under Civ.R. 65 and the effects of its temporary restraining order, it is clear that the order is not binding on other trial courts hearing cases with different parties, on appellate courts, or even on this court, all of which may reach different conclusions on the matter. But to suggest that a trial-court judge does not have the power to declare a law facially unconstitutional undermines the central philosophy of why courts exist—to say what the law is. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177, 2 L.Ed. 60 (1803).

**{¶ 18}** Another significant problem with my colleague's view is that if Ohio's trial courts do not have the power to determine the facial constitutionality of laws, then no Ohio courts do. This court does not have explicit original jurisdiction to determine the constitutionality of the General Assembly's enactments. *See* Ohio Constitution, Article IV, Section 2(B)(1). It is by way of appeal that we may determine that a statute is unconstitutional and act as a check on the legislature to prevent it from imposing unconstitutional laws on the people. *See* Ohio Constitution, Article IV, Section 2(B)(2). Nor does this court, through its original jurisdiction, possess the independent power of injunction. *See State ex rel. Crenshaw v. Cuyahoga Cty. Bd. of Elections*, __ Ohio St.3d __, 2023-Ohio-3377, __ N.E.3d __, ¶ 15. And further, we have long recognized that original jurisdiction over matters in which an injunction is sought as the final remedy is vested in the common pleas courts and that this court has the power to grant an injunction only "as ancillary to a cause of which [we have] jurisdiction, in order to preserve

4. It has also been observed that "punctuation is not decisive of the construction of a statute." *Costanzo v. Tillinghast*, 287 U.S. 341, 344, 53 S.Ct. 152, 77 L.Ed. 350 (1932); *see also Barrett v. Van Pelt*, 268 U.S. 85, 91, 45 S.Ct. 437, 69 L.Ed. 857 (1925), quoting *Chicago, Milwaukee & St. Paul Ry. Co. v. Voelker*, 129 F. 522, 527 (8th Cir.1904) (" 'Punctuation is a minor, and not a controlling element in interpretation, and courts will disregard the punctuation of a statute, or re-punctuate it, if need be, to give effect to what otherwise appears to be its purpose and true meaning' "); *Lessee of Ewing v. Burnet*, 36 U.S. 41, 54 (1837) ("Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to, when all other means fail; but the court will first take the instrument by its four corners, in order to ascertain its true meaning; if that is apparent, on judicially inspecting the whole, the punctuation will not be suffered to change it").

matters in status quo," *Copperweld Steel Co. v. Indus. Comm.*, 142 Ohio St. 439, 443, 52 N.E.2d 735 (1944). Thus, it is the common pleas courts that may issue injunctions under their original jurisdiction. If this court were to follow my colleague's suggested reasoning, the only injunctions that could be issued by courts of original jurisdiction would be injunctions that are effective only in the county in which the action was filed. That result is untenable.

**{¶ 19}** This court has explained, "The power and duty of the judiciary to determine the constitutionality and, therefore, the validity of the acts of the other branches of government have been firmly established as an essential feature of the Ohio system of separation of powers." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 462, 715 N.E.2d 1062 (1999); *see also id.*, quoting *Beagle v. Walden*, 78 Ohio St.3d 59, 62, 676 N.E.2d 506 (1997) (" 'Interpretation of the state and federal Constitutions is a role exclusive to the judicial branch' "). A "primary role" of the judiciary is "determining the constitutionality of a law that has inflicted real injury on a p[arty] who has brought a justiciable legal claim." *United States v. Windsor*, 570 U.S. 744, 762, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013). "The Judicial Branch appropriately exercises that authority * * * where the question is whether Congress or the Executive is 'aggrandizing its power at the expense of another branch.' " *Zivotofsky v. Clinton*, 566 U.S. 189, 197, 132 S.Ct. 1421, 182 L.Ed.2d 423 (2012), quoting *Freytag v. Commr. of Internal Revenue*, 501 U.S. 868, 878, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991); *see also Myers v. United States*, 272 U.S. 52, 176, 47 S.Ct. 21, 71 L.Ed. 160 (1926); *Bowsher v. Synar*, 478 U.S. 714, 734, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986); *Morrison v. Olson*, 487 U.S. 654, 685, 108 S.Ct. 2597, 101 L.Ed.2d 569 (1988). It is disappointing that counsel for relators, the Ohio attorney general, engages in what is on its face an all-out assault on one of the three pillars of our republic by seeking to curb the power of all common-pleas-court judges to issue injunctions. And it is even more ominous that a member of this court would issue an opinion indicating an interest in hollowing out that constitutional power held by the common pleas courts.

**{¶ 20}** According to our caselaw, "[a] statute cannot be enjoined unless it is unconstitutional." *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 15 (lead opinion), citing *Toledo v. State*, 154 Ohio St.3d 41, 2018-Ohio-2358, 110 N.E.3d 1257, ¶ 17. And a finding of facial unconstitutionality requires a showing that the law is unconstitutional beyond a reasonable doubt, *Wymsylo*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, at ¶ 20, or, more appropriately, that the law "is in direct conflict with inhibitions of

the Constitution," *Ohio Pub. Interest Action Group, Inc.*, 43 Ohio St.2d 175, 331 N.E.2d 730, at paragraph four of the syllabus. The two plaintiffs in this case have challenged the Ohio Saving Adolescents from Experimentation Act on the basis that it will prevent them from taking puberty-blocking drugs. My colleague complains that the common pleas court's temporary restraining order is overbroad, without recognizing that it was the overbreadth of the law in question that prompted the plaintiffs to bring their claims in the first place; they claim that the new law is so multifaceted that it violates the single-subject rule of Article II, Section 15(D) of the Ohio Constitution. Because of the very broad nature of the law enjoined, the effect of the temporary restraining order must also be broad.

**{¶ 21}** My colleague further complains that the common pleas court's order "sweeps in the entire enactment,"[5] concurring opinion at ¶ 2, ignoring the fact that the court determined that the law was likely facially unconstitutional *because* it violated the single-subject rule of the Ohio Constitution. When such a wide variety of laws that cover multiple subjects are thrown together into the same bill, which part of the bill should stand and which part should fall when a court temporarily enjoins it?

**{¶ 22}** I agree with my colleague that "[t]he common pleas court clearly had subject-matter jurisdiction over the underlying lawsuit," concurring opinion at ¶ 5. By citing with approval Article IV, Section 4(B) of the Ohio Constitution for the proposition that a common pleas court has jurisdiction over "all justiciable matters," my colleague demonstrates that we agree about the common pleas courts' jurisdiction. But it is alarming that, without citing any substantive authority to support the notion, my colleague conjectures that we might have the power to redefine not only the jurisdiction of the common pleas courts but the entire judiciary:

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5. The concurring opinion complains:

> But the order is not limited to those provisions of the law [concerning puberty-blocking drugs]; rather it sweeps in the entire enactment, including provisions about gender-transition surgeries, parental rights, school athletics, and administration of cross-sex hormones. *See, e.g.*, R.C. 3109.054 ("parental rights"); R.C. 3129.02(A) (prohibiting physicians from providing "gender transition" services that include "gender reassignment" surgeries, "cross-sex hormone[s]," or "puberty-blocking" drugs); R.C. 3313.5320 (requiring "[s]eparate teams" for biologically male and biologically female students).

Concurring opinion at ¶ 2.

> Although we dismiss this action today, this case raises an important issue: Is it appropriate for one judge in a single county to issue a statewide injunction that goes beyond what is necessary to provide interim relief to the parties in the case? * * *
>
> This court should address the propriety of universal injunctions, like the one at issue here, in an appropriate case.

Concurring opinion at ¶ 7. If illustrations in judicial opinions were standard, it would be at this juncture that I would insert an image of Edvard Munch's 1893 painting titled "The Scream." But since a description may suffice, I will move on and note that my colleague finds support for his musing in one opinion concurring with an opinionless procedural order of the United States Supreme Court that partially stays an injunction. *See Labrador v. Poe*, __ U.S. __, 144 S.Ct. 921, __ L.Ed.2d __ (2024).

**{¶ 23}** In *Labrador*, the Court, without providing its reasoning, granted a stay as to part of a district court's injunction. My colleague's concurring opinion jumps to the conclusion that the federal district court's "universal injunction" was "effectively modif[ied]" by the stay and reads considerable intent into that benign act based on a concurrence of one justice. Concurring opinion at ¶ 7; *see also Labrador* at __, 144 S.Ct. at 921-928 (Gorsuch, J., concurring in the grant of stay). Even ignoring the fact that the concurrence relied on by my colleague is a minority opinion concurring with a procedural ruling, there are a number of salient distinctions between that interlocutory ruling and the posture of this case.

**{¶ 24}** A stay is not an injunction. The Ohio Constitution, unlike the federal Constitution, has a single-subject rule for legislation that results in multisubject legislative acts being facially unconstitutional. Ohio Constitution, Article II, Section 15(D). As demonstrated above, the Ohio court system is not the federal court system, and Ohio courts that are not common pleas courts have little to no power to issue injunctions. But even taking Justice Gorsuch's minority view in *Labrador* at face value, his concurring opinion uses the term "universal injunctions," *Labrador* at __, 144 S.Ct. at 926-927 (Gorsuch, J., concurring in the grant of stay), and claims that such injunctions "circumvent normal judicial processes" and "effectively transform[] a limited dispute between a small number of parties focused on one

feature of a law into a far more consequential referendum on the law's every provision as applied to anyone," *id.* at __, 144 S.Ct. at 927 (Gorsuch, J., concurring in the grant of stay).

**{¶ 25}** Yet, that is the nature of a finding that an enactment facially violates the Constitution. The very nature of a facial constitutional violation is that the offending law violates the Constitution in every circumstance. "If a statute is unconstitutional on its face, the statute may not be enforced under any circumstances." *Wymsylo*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, at ¶ 21. Were a common-pleas-court judge to cherry-pick what should be enjoined from the allegedly offending legislation, as it appears my colleague would have the trial-court judge do here, accusations that the judge was legislating from the bench would justly fly.

## III. CONCLUSION

**{¶ 26}** If a law that is facially unconstitutional may not be applied to an individual, then it may not be applied to anyone else. *Id.* Similarly, a temporary restraining order based on a substantial likelihood that a law is facially unconstitutional may not be limited to just the parties in the case. Moreover, when the court hearing such a challenge has jurisdiction over the state as a party-defendant, it has the power to enjoin the state from applying the law, regardless of the law's subject matter. My colleague's concurring opinion is more akin to a political statement than a legal one, which is why I have written this opinion.

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