

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

June 6, 2001

MERIT DOCKET

01-640. State ex rel. Chebib v. Comstock.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

01-651. State ex rel. Echols v. Leach.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

01-722. State ex rel. Spears v. Coyne.

In Procedendo. On answer of respondent, motion for summary judgment, motion to amend complaint in procedendo, motion for summary judgment, and motion to dismiss respondent's motion for summary judgment.

On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

01-756. Schaffer v. State Farm Auto. Ins. Co.

Certified State Law Question, No. 399CV7375. On review of preliminary memoranda. The court declines to answer the following certified questions, and this cause is dismissed:

“This Court has determined that the constitutionality of Ohio Rev.Code § 3937.18(A)(2) & (G), effective October 20, 1994, may be determinative of this proceeding, and that there is no controlling precedent on this issue in the decisions of the Supreme Court of Ohio. Therefore, this Court certifies the following questions to the Supreme Court of Ohio pursuant to Rule XVIII of the Rules of Practice of the Supreme Court of Ohio:

“1. Is Ohio Revised Code § 3937.18(G), as amended by Senate Bill 20, effective October 20, 1994, unconstitutional on any grounds under the facts of this case, including those stated by the Plaintiffs?

“2. Is Ohio Revised Code § 3937.18(A)(2), as amended by Senate Bill 20, effective October 20, 1994, unconstitutional on any grounds under the facts of this case, including those stated by the Plaintiffs?”

Moyer, C.J., F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

Douglas and Resnick, JJ., dissent.

01-760. State ex rel. Chebib v. Pianka.

In Mandamus and Prohibition. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

01-761. State ex rel. Smith v. Akron Health Dept.

In Mandamus and Prohibition. On motion to dismiss of respondents with exception of Judge Schneiderman and motion to strike respondents' motions to dismiss. Motion to dismiss sustained. Cause dismissed.

On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

01-782. State ex rel. Steele v. Clerk of Courts, Court of Claims of Ohio.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

01-796. Gee v. Randle.

In Habeas Corpus. On petition for writ of habeas corpus by William Gee. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**DISMISSALS, SUA SPONTE, NO SUBSTANTIAL
CONSTITUTIONAL QUESTION AND DISCRETIONARY
APPEALS, IF APPLICABLE, NOT ALLOWED**

01-390. State v. Spencer.

Guernsey App. No. 99CA43.

Pfeifer, J., dissents.

01-466. State v. Martin.

Franklin App. No. 00AP-547.

Lundberg Stratton, J., dissents.

01-472. State v. Tolliver.

Montgomery App. No. 18645.

01-480. State v. Crawford.

Wayne App. No. 99CA0035.

01-487. State v. Barnes.

Cuyahoga App. No. 77078.

01-491. State v. Hughes.

Lucas App. No. L-00-1383.

Resnick, J., not participating.

01-499. Siggers v. Voinovich.

Franklin App. No. 00AP-231.

01-502. In re Leonard H.

Lucas App. No. L-00-1258.

Resnick, J., not participating.

01-504. Mainwald Bros., Inc. v. Ziarno.

Lucas App. No. L-00-1234.

01-505. Am. Mfrs. Mut. Ins. Co. v. Den-Mat Cerinate Dental Laboratories.
Mahoning App. No. 99CA123.

01-507. State v. Cass.
Franklin App. No. 99AP-1422.

01-511. State v. Champion.
Montgomery App. No. 18394.

01-516. State v. Christman.
Monroe App. No. 828.

01-521. Harman v. Emrich.
Stark App. No. 2000CA00321. On motion to consolidate case with 00-591, *State v. Hill*, Fairfield App. No. 98CA67. Motion denied.

01-523. State v. Sheppard.
Hamilton App. No. C-000387.

01-525. State v. Taylor.
Clermont App. No. CA2000-05-036.

Moyer, C.J., dissents, would allow the appeal, and would consolidate the cause with 01-488, *State v. Hollingsworth*, Wayne App. No. 00CA0016.

01-527. State v. Meadows.
Meigs App. No. 00CA26.

01-528. State v. Scuba.
Geauga App. No. 2000-G-2308.

01-531. State v. Griffin.
Summit App. No. 20280.

01-538. State v. Haas.
Wood App. No. WD-00-048. On discretionary appeal and motion to consolidate case with case Nos. 01-542, 01-553, and 01-541. Appeal and motions denied.
Moyer, C.J., and Lundberg Stratton, J., dissent.
Resnick, J., not participating.

01-540. Hill v. J.S. MacClean Co.

Franklin App. No. 99AP-573.

Resnick, J., dissents.

01-541. State v. Webster.

Wood App. No. WD-00-030. On discretionary appeal and motion to consolidate case with case Nos. 01-542, 01-538, and 01-553. Appeal and motion denied.

Moyer, C.J., and Lundberg Stratton, J., dissent.

Resnick, J., not participating.

01-542. State v. Bovee.

Wood App. No. WD-00-032. On discretionary appeal and motion to consolidate case with case Nos. 01-538, 01-553, and 01-541. Appeal and motion denied.

Moyer, C.J., and Lundberg Stratton, J., dissent.

Resnick, J., not participating.

01-553. State v. Miller.

Wood App. No. WD-00-008. On discretionary appeal and motion to consolidate case with case Nos. 01-542, 01-538, and 01-541. Appeal and motion denied.

Moyer, C.J., and Lundberg Stratton, J., dissent.

Resnick, J., not participating.

01-554. Cincinnati v. Banks.

Hamilton App. No. C-000039.

01-558. Thompson v. Elbert.

Lorain App. No. 99CA007476.

01-560. Cuyahoga Falls v. Wells.

Summit App. No. 19959.

01-561. State v. Hendershot.

Licking App. No. 99CA102.

01-562. State v. Kelley.

Lucas App. No. L-99-1405.

Resnick and Lundberg Stratton, JJ., dissent.

01-565. State v. Brewer.

Erie App. No. E-00-003.

Resnick, J., not participating.

01-569. Sterling Truck Corp. v. Sacramento Valley Ford Truck Sales.

Cuyahoga App. No. 77920.

Moyer, C.J., dissents.

01-575. State v. Ulis.

Lucas App. No. L-00-1196.

01-579. Robinson v. A.W. Chesterton, Inc.

Cuyahoga App. No. 79090.

01-580. State v. Anderson.

Hamilton App. No. C-000421.

01-584. State v. Drake.

Cuyahoga App. No. 77460.

Douglas, J., would allow on Propositions of Law Nos. I and III.

01-586. Kozub v. Granger Twp. Bd. of Zoning Appeals.

Medina App. No. 3048-M.

01-587. State v. Wesley.

Lucas App. No. L-01-1029.

Resnick, J., not participating.

01-592. State v. Roark.

Warren App. No. CA2000-05-046.

01-593. State v. Lawrence.

Erie App. No. E-00-031.

Resnick, J., not participating.

01-594. State v. Taylor.

Jefferson App. No. 98JE31.

01-598. In re Lloyd.
Stark App. No. 2000CA0009.

01-608. State v. Belcastro.
Cuyahoga App. No. 77443.

01-610. Green v. Clair.
Summit App. No. 20271.

01-613. State v. Loop.
Clermont App. No. CA99-02-022.

01-616. Amvets Post 1983 Schneider Hume, Inc. v. Ohio Liquor Control Comm.
Franklin App. No. 00AP-480.

01-617. State v. Marine.
Union App. No. 14200030.
Pfeifer, J., dissents.

01-618. Ross v. Trumbull Cty. Child Support Enforcement Agency.
Trumbull App. No. 2000-T-0025.

01-628. State v. Cunigan.
Montgomery App. No. 17924.

01-629. State v. Feathers.
Summit App. No. 19837.

01-637. Lakewood v. Cirino.
Cuyahoga App. No. 78057.

01-645. State v. Toles.
Stark App. No. 97CA0139.

01-648. State v. Walters.
Hamilton App. No. C-990866.

01-650. State v. Fischer.

Cuyahoga App. No. 75222.

Pfeifer, J., dissents.

01-655. State v. Hamilton.

Medina App. No. 3098-M.

01-656. State v. Farley.

Montgomery App. No. 8576.

01-657. State v. Moore.

Stark App. No. 99CA00126.

01-671. State v. Barber.

Fairfield App. No. 00CA49.

01-683. State v. Robb.

Franklin App. Nos. 00AP-280 and 00AP-281.

01-703. State v. Mays.

Cuyahoga App. No. 73376.

01-738. State v. Love.

Hamilton App. No. C-000164.

01-778. In re Adoption of DiDonato.

Lake App. No. 2000-L-182.

Moyer, C.J., and Resnick, J., dissent.

01-781. In re Boyer.

Cuyahoga App. No. 77745.

Moyer, C.J., and Lundberg Stratton, J., dissent.

01-838. In re Morales.

Cuyahoga App. No. 78271. On discretionary appeal and motion for stay of court of appeals' judgment. Appeal and motion denied.

Pfeifer, J., dissents.

MOTION DOCKET

00-1786. State ex rel. Highfill v. Indus. Comm.

Franklin App. No. 99AP-709. On request for oral argument. Request denied.

00-1924. Akron Mgt. Corp. v. Zaino.

Board of Tax Appeals, No. 99-K-595. *Sua sponte*, cause consolidated with 00-1925, 00-1926, and 00-1927.

00-1925. Quail Hollow Mgt., Inc. v. Zaino.

Board of Tax Appeals, No. 99-K-594. *Sua sponte*, cause consolidated with 00-1924, 00-1926, and 00-1927.

00-1926. De Transp. Corp. v. Zaino.

Board of Tax Appeals, Nos. 99-K-612, 99-K-614 and 99-K-615. *Sua sponte*, cause consolidated with 00-1924, 00-1925, and 00-1927.

00-1927. Glenmoor Properties, Inc. v. Zaino.

Board of Tax Appeals, No. 99-K-613. *Sua sponte*, cause consolidated with 00-1924, 00-1925, and 00-1926.

00-1984. Aetna Cas. & Sur. Co. v. Goodyear Tire & Rubber Co.

Summit App. No. 19121. On motion for admission *pro hac vice* of M.P. Comiskey, D. Schlessinger, and H. Griffin for Certain Underwriters et al. Motion granted.

Cook, J., not participating.

On motion to consolidate with 01-493, *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, Summit App. No. 19121, motion for admission *pro hac vice* of M. Gregg and R. Roloff by L. Bach for Everest Reinsurance Co. and Mt. McKinley, etc., and motion for admission *pro hac vice* of R. Bates, Jr., M. Enriquez, and M. Sullivan for American Re-Insurance Co. Motions granted.

Cook, J., not participating.

01-356. Sepela v. MBL Partners, Ltd.

Clermont App. No. CA2000-06-038. On amended response to show cause order issued May 2, 2001. Cause shown and cause dismissed.

Cook, J., would sanction attorney James Magee, Jr., in the amount of appellee's attorney fees incurred in filing its memorandum in response to jurisdiction and motion to dismiss in this court.

01-679. State ex rel. Gadsden v. Lioi.

Stark App. No. 2001CA00087. On motion to supplement record. Motion denied.
Moyer, C.J., F.E. Sweeney and Pfeifer, JJ., dissent.

01-809. State v. Mallory.

Jefferson App. No. 97JE64. On motion for leave to file delayed appeal. Motion denied.
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

01-844. State v. Dixon.

Franklin App. No. 98AP-626. On motion for leave to file delayed appeal. Motion denied.
Pfeifer, J., dissents.

01-867. McGeary v. Brocker.

Mahoning App. No. 00CA257. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Journal Entry filed April 26, 2001:

"On consideration of the motion to certify a conflict judgment we find that the decision in this case, as well as this court's decision in *Second National Bank of Warren v. Liguore* (August 26, 1998), Mahoning App. No. 96 C.A. 243, unreported [1998 WL 574432], [is] in conflict with *Hoecker v. Dayton & Montgomery Co. Park District* (Sept. 13, 1995), Montgomery App. No. 15141, unreported [1995 WL 547068]. The issue certified to the Ohio Supreme Court to be finally decided is whether the vacation of an order granting final summary judgment is a final appealable order within the contemplation of R.C. 2505.02."

Sua sponte, cause consolidated with 01-398, *McGeary v. Brocker*, Mahoning App. No. 00CA257.

01-890. In re Singleton Arbitration.

Portage App. No. 2000-P-0031. On motion for stay of court of appeals' judgment. Motion denied.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

01-941. State ex rel. Cleveland Business Park, Ltd. v. Cleveland.

In Mandamus. On motion to expedite consideration of complaint and motion for issuance of peremptory writ. Motion denied.
Douglas, J., dissents.

DISCRETIONARY APPEALS ALLOWED

01-398. McGeary v. Brocker.

Mahoning App. No. 00CA257. Discretionary appeal allowed and cause consolidated with 01-867, *McGeary v. Brocker*, Mahoning App. No. 00CA257.

Douglas, Resnick and Lundberg Stratton, JJ., dissent.

01-404. Mackey v. Mackey.

Summit App. No. 20010.

Douglas and F.E. Sweeney, JJ., dissent.

01-443. Ohio River Pipe Line LLC v. Henley.

Fairfield App. No. 00CA16.

Moyer, C.J., and Cook, J., would allow on Proposition of Law No. I only.

F.E. Sweeney, J., dissents.

01-446. Nitchman v. Nationwide Mut. Fire Ins. Co.

Lorain App. No. 99CA007506.

Moyer, C.J., would allow and would also hold the cause for the decision in 00-1572, *Wallace v. Balint*, Cuyahoga App. No. 75953.

F.E. Sweeney, Cook and Lundberg Stratton, JJ., dissent.

01-493. Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.

Summit App. No. 19121. On discretionary appeal, motion for admission *pro hac vice* of Michael W. Morrison and Dale R. Kurth by Brian T. Winchester for Allstate Ins. Co., motion to consolidate with case No. 00-1984, *Aetna Cas. & Sur. Co. v. Goodyear Tire & Rubber Co.*, Summit App. No. 19121, motion for admission *pro hac vice* of A. Hugh Scott and Kathleen A. Burdette by Jordan Berns for Aetna and Travelers, motion for admission *pro hac vice* for R. Bates, Jr., M. Enriquez, and M. Sullivan for American Re-Insurance Co., and motion for admission *pro hac vice* of M. P. Comiskey, D. Schlessinger, and H. Griffin for Certain Underwriters et al. Discretionary appeal allowed and motions granted.

Lundberg Stratton, J., would allow on Propositions of Law Nos. I and III only and would also grant the motions.

Cook, J., not participating.

DISCRETIONARY APPEALS NOT ALLOWED

01-475. Cohen v. Cohen.

Fairfield App. No. 99CA52.

Resnick, J., dissents.

01-484. Farina Realty, Inc. v. Zellers.

Cuyahoga App. Nos. 77647 and 78149.

01-498. State v. Hall.

Trumbull App. No. 2000-T-0051.

01-501. Guy v. Steubenville.

Jefferson App. No. 99JE12.

01-510. Bodeker v. Saunders.

Hamilton App. Nos. C-000017 and C-990908.

Lundberg Stratton, J., dissents.

01-534. Wells v. Westfield Ins. Co.

Columbiana App. Nos. 99CO12 and 99CO7. On discretionary appeal and cross-appeal. Appeals denied.

Pfeifer, J., would allow the cross-appeal.

01-535. Motorists Ins. Cos. v. Shields.

Athens App. No. 00CA26. Discretionary appeal and cross-appeal denied.

01-545. Akron v. Darulis.

Summit App. No. 20162.

01-549. Webster v. Koch Industries, Inc.

Richland App. No. 00CA30.

01-550. Matheson v. Morog.

Erie App. No. E-00-017.

Resnick, J., not participating.

01-555. State v. Schlagheck.

Lucas App. No. L-00-1121.

Pfeifer, J., dissents.

Resnick, J., not participating.

01-572. JTD Health Sys., Inc. v. Pricewaterhouse Coopers, LLP.

Auglaize App. No. 2200021.

01-574. Jones v. Huntington Local School Dist.

Ross App. No. 00CA2548.

Lundberg Stratton, J., would allow on Proposition of Law No. II.

01-578. Wright v. Hamilton.

Butler App. No. CA2000-07-152.

F.E. Sweeney, J., dissents.

01-582. Fry v. Walters & Peck Agency, Inc.

Williams App. No. WM-00-005.

Resnick, J., not participating.

01-590. Wertz v. Tomasik.

Summit App. No. 20209.

01-597. Clearview Edn. Assn., OEA/NEA v. Clearview Local School Dist. Bd. of Edn.

Lorain App. No. 00CA007678.

Douglas, J., dissents.

01-600. Johnson v. Johnson.

Wood App. Nos. WD-98-082, WD-99-039 and WD-99-057.

01-601. Fritz-Rumer-Cooke Co. v. Todd & Sargent.

Franklin App. No. 00AP-817.

Moyer, C.J., dissents.

01-602. Oglesby v. Columbus.

Franklin App. No. 00AP-544. On discretionary appeal and cross-appeal, motion to dismiss appeal of James B. Oglesby, and motion for sanctions for frivolous action. Appeals and motions denied.

01-626. Miller v. Northwest Conduit Corp.
Franklin App. No. 00AP-822.

01-638. Boyko v. Pries.
Medina App. No. 3093-M.
F.E. Sweeney, J., dissents.

01-639. State v. Scott.
Logan App. No. CA00-08-0026.

01-701. Hathy v. Mentor.
Lake App. No. 2001-L-009.
F.E. Sweeney and Pfeifer, JJ., dissent.

RECONSIDERATION DOCKET

98-1483. State v. Jones.
Ashtabula C.P. No. 97CR221. Reported at 91 Ohio St.3d 335, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

01-454. Hughes v. Calabrese.
In Prohibition. Reported at 91 Ohio St.3d 1486, ___ N.E.2d _____. On motion for
reconsideration. Motion denied.
Douglas and Resnick, JJ., not participating.