In the Supreme Court of Ohio

TWISM ENTERPRISES, LLC, d/b/a valuCADD Solutions Appellant, v. **STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS** Appellee,	Ohio Supreme Court Case No. 2021-1440 On Appeal from the Hamilton County Court of Appeals, First Appellate District Court of Appeals Case Nos. C-200411 & C-210125

BRIEF *AMICUS CURIAE* OF THE NEW CIVIL LIBERTIES ALLIANCE IN SUPPORT OF APPELLANT TWISM ENTERPRISES, LLC

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae the New Civil Liberties Alliance is a nonpartisan, nonprofit organization devoted to defending civil liberties. As a public-interest law firm, NCLA was founded to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other means of advocacy.

The "civil liberties" of the organization's name include rights at least as old as the U.S. Constitution itself, such as jury trial, due process of law, and the right to be tried in front of an impartial and independent judge. Yet these selfsame civil rights are also very contemporary—and in dire need of renewed vindication—precisely because administrative agencies have trampled them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints on the Administrative State. Although Americans still enjoy the shell of their Republic, there has developed within it a very different sort of government—a type, in fact, that the Constitution was designed to prevent. This unconstitutional state within the Constitution's United States and the State of Ohio is the focus of NCLA's concern.

This case is particularly important to NCLA because it presents an opportunity for this Court to fulfill its fundamental duty "to say what the law is" and denounce deference to agency interpretations of statutes. By doing so, NCLA believes the Court would honor the role of judges, protect the due process of law for all litigants, and bolster the confidence of the people in the courts.

STATEMENT OF CASE

As the court of appeals noted, there are no material facts in dispute. (3a, ¶ 3). TWISM Enterprises, LLC, a small, Cincinnati-based engineering firm, applied for a Certificate of Authorization ("COA") to provide professional engineering services to the public, which was denied by the Board of Registration for Professional Engineers and Surveyors ("Board") on February 28, 2019. (28a).

According to the Board, TWISM's application was denied solely because TWISM "did not designate one or more full-time partners, managers, members, officers, or directors as being responsible for and in responsible charge of the professional engineering … activities and decisions, and those designated persons shall be registered in this state," as required by state law. R.C. § 4733.16(D). (*Id.*) TWISM designated independent-contractor James Cooper, an Ohio-registered engineer, as its engineering manager who performed substantially all of TWISM's engineering hours and who led TWISM's engineering activities. (29a, ¶ 2; 33a, ¶ 8). The Board claimed though that R.C. § 4733.16(D) precludes a firm from designating an independent contractor to serve as the firm's manager. (33a, ¶ 8).

According to the Board's regulatory definitions, "responsible charge" is defined as "being in control of, accountable for and in either direct or indirect supervision of the engineering … activities of the business enterprise." Ohio Adm. Code § 4733-39-02(A). The Board defines "full-time" as "working more than thirty hours per week or working substantially all the engineering … hours for a … limited liability company … that holds a certificate of authorization." Ohio Adm. Code § 4733-39-02(B).

TWISM appealed to the court of common pleas, which applied *de novo* review, as the facts were undisputed. (19a). The magistrate rejected the Board's argument that under R.C. § 4733.16(D), an engineering manager had to be a full-time, W-2 employee, pointing out that the Board had failed to "point[] to any statute or rule whereby either the General Assembly or the Board has even arguably imposed such a requirement." (22a). Further, the "undisputed evidence before the Board" showed that Mr. Cooper "fully met" the "full[-]time" "requirement" in Ohio Adm. Code § 4733-39-02(B). (21a). The magistrate therefore recommended reversal and vacatur of the Board's decision. (22a).

Upon the Board's objections, the trial court reviewed *de novo* and denied the Board's objections, noting that R.C. § 4733.16(D) "does not put forth any requirements regarding what kind of employment, *i.e.*, 'W-2' or '1099' employment," is mandated, nor does it "state that a designated

manager must devote all his or her time" to a single firm. (16a-17a). The trial court concluded that the Board's purported requirements that a manager must devote all of his professional time to a company as a W-2 employee is "not mandated by the plain text of" § 4733.16(D). (16a). The trial court also pointed out that the Board's interpretation "creates new, substantive requirements that are not found in" R.C. § 4733.16(D). (17a). The trial court thus approved the magistrate's decision, reversed, and vacated the Board's denial, and ordered the Board to issue TWISM a COA. (*Id.*)

On appeal, the appellate court stated that its review was limited to the question of whether R.C. § 4733.16(D) and Ohio Adm. Code § 4733-39-02(B) allow an independent contractor to serve as a "full-time manager." (6a, ¶ 14). The Board argued "that the trial court was required, and failed to defer to the Board's construction of R.C. 4733.16 and Ohio Adm. Code 4733-39-02[.]" (*Id.* at ¶ 15). The court rejected the Board's argument that its "reasonable" interpretation was necessarily entitled to deference because, as the court explained, deference is appropriate only if a statute or rule is ambiguous. (6a-7a, ¶¶ 15-17). The court ultimately concluded that Ohio Rev. Code 4733.16(D) and Ohio Adm. Code 4733-39-02(B) are ambiguous "[b]ecause there are different, reasonable readings of 'full-time manager.'" (11a, ¶ 29). As a result, and without further analysis, the court upheld the Board's decision because, it said, it "must defer to the Board's interpretation." (*Id.*)

ARGUMENT AND LAW

Granting "deference" to agency statutory interpretations violates both the state and federal constitutions for at least two reasons. First, agency deference requires judges to abandon their duty of independent judgment in violation of Article IV of the Ohio Constitution. Ohio Const. art. IV, § 1. Second, agency deference violates the Due Process Clauses of the Ohio Constitution and the Fourteenth Amendment of the U.S. Constitution by commanding judicial bias toward a litigant. Ohio Const. art. I, § 16; U.S. Const. amend. XIV. Here, the Board seeks deference to its interpretation that R.C. § 4733.16(D) and Ohio Adm. Code § 4733-39-02(B) preclude an engineering firm from

designating an independent contractor as the firm's "full-time manager" for purposes of obtaining a COA. Indeed, notwithstanding the Board's own regulations, which provide otherwise, the Board contends that an engineering manager under R.C. § 4733.16(D) qualifies as a "full-time manager" only if he was paid as a W-2 employee, rather than as a "1099" independent contractor—a requirement that is entirely absent from the plain language of the statute and the rule.

I. AGENCY DEFERENCE VIOLATES THE OHIO AND FEDERAL CONSTITUTIONS BY REQUIRING JUDGES TO ABANDON THEIR DUTY OF INDEPENDENT JUDGMENT

Agency deference compels judges to abandon their duty of independent judgment. Under the Ohio Constitution, the judiciary is a separate and independent branch of the state government, and no member of the political branches shall exercise its powers. The Ohio Supreme Court has observed that "[t]here can be no debate that pursuant to Section 1, Article IV of the Ohio Constitution, the judicial power resides exclusively in the judicial branch," and the judiciary's "authority within that realm shall not be violated." *Norwood v. Horney*, 110 Ohio St. 3d 353, 386 (2006) (citing *State ex rel. Bray v. Russell*, 89 Ohio St. 3d 132, 136 (2000)). The "separation-of-powers doctrine prohibits the executive branch of government from overriding a court's judgment about what the law requires in a particular case." *State v. Henderson*, 161 Ohio St. 3d 285, 299 (2020). Indeed, "the power of constitutional adjudication was secured exclusively in the judiciary, essential to its integrity and independence, serving, fundamentally and intrinsically, as a check upon the other branches." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 467 (1999). Thus, it is *the judiciary's* "power and [] solemn duty to determine the constitutionality and validity of acts by other branches of the government and to ensure that the boundaries between branches remain intact." *State v. Bodyke*, 126 Ohio St. 3d 266, 276 (2010).

Despite these stated principles, judicial deference commands Ohio judges to abandon their independence and impartiality by giving controlling weight to an agency's opinion of what a statute

means—not because of the persuasiveness of the agency's argument, but rather based solely on the brute fact that this administrative entity has addressed the interpretive question before the Court. *See Michigan v. EPA*, 135 S. Ct. 2699, 2712 (2015) (Thomas, J., concurring) (""The judicial power … requires a court to exercise its independent judgment in interpreting and expounding upon the laws.' […] [Agency] deference precludes judges from exercising that judgment[.]") (quoting *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 119 (2015) (Thomas, J., concurring)).

This abandonment of judicial responsibility is not tolerated in any other context—nor should it be accepted by a truly independent judiciary. The Ohio Code of Judicial Conduct's and the Ohio Constitution's mandate of judicial independence cannot be easily displaced. Yet agency deference would allow a non-judicial entity to usurp the judiciary's constitutionally assigned power of interpretation and would command judges to "defer" to the legal pronouncements of a supposed "expert" body external to the judiciary. *See State ex rel. McLean v. Indus. Comm'n of Ohio*, 25 Ohio St. 3d 90, 92 (1986) (granting deference to agency's interpretation due to the agency's expertise); *see also id.* at 93 ("[W]e afford the administrative decision *sub judice* the deference due to it under our law.").

In the end, agency deference is nothing more than a command that courts abandon their duty of independent judgment and assign controlling weight to a non-judicial entity's interpretation of a statute. It is no different in principle from an instruction that courts must assign weight and defer to statutory interpretations announced by a congressional committee, a group of expert legal scholars, or *The Columbus Dispatch*'s editorial page. In each of these absurd scenarios, the courts similarly would be following another entity's interpretation of a statute so long as it is not "unreasonable or repugnant"—even if the court's own judgment would lead it to conclude that the statute means something else. *See State ex rel. Yost v. Church of Troy*, 2020-Ohio-4695, ¶ 59 (11th App. Dist. 2020) (citing *Salem v. Koncelik*, 164 Ohio App. 3d 597, 604 (10th App. Dist. 2005)).

To be clear, there is nothing at all wrong or constitutionally problematic about a court that considers an agency's interpretation and gives it weight according to its persuasiveness. *See, e.g.*, *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 914 N.W.2d 21, 53 (Wis. 2018) (noting "administrative agencies can sometimes bring unique insights to the matters for which they are responsible" but that "does not mean we should defer to them"). An agency is entitled to have its views heard and considered by the court, just as any other litigant or *amicus*, and a court may and should consider the "unique insights" an agency may bring on account of its expertise and experience. *Id.* "'[D]ue weight' means giving 'respectful, appropriate consideration to the agency's views' while the court exercises its independent judgment in deciding questions of law"—due weight "is a matter of persuasion, not deference." *Id.*

But here, the court of appeals concluded that, because "both parties' definitions of 'full-time manager' are reasonable," it *must* defer to "the Board's reasonable interpretation" of what the court of appeals characterized as "ambiguous statutes and administrative rules." (10a, ¶ 28; 11a, ¶ 31). The court of appeals, thus, abdicated its duty of independent judgment to "say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), instead, limiting its "legal analysis" to the conclusion that R.C. § 4733.16(D) and Ohio Adm. Code § 4733-39-02(B) are ambiguous "[b]ecause there are different, reasonable readings of 'full-time manager.'" (11a, ¶ 29).

Recognizing an argument's persuasive weight does not compromise a court's duty of independent judgment. But agency deference requires far more than respectful consideration of the agency's views; it commands that courts give weight to those views simply because the agency espouses them, and it instructs courts to subordinate their own judgments to the views preferred by the agency. *See Weaver v. Ohio Dept. of Job and Family Servs.*, 153 Ohio App. 3d 331, 335 (1st Dist. 2003) ("Unless the construction is unreasonable or repugnant" to the statute or rule, courts "must give due deference to an administrative agency's construction of a statute or rule that the agency is empowered

to enforce."). The judicial duty of independent judgment allows (indeed, requires) courts to consider an agency's views and to adopt them *when persuasive*, but it forbids a regime in which courts "defer" or give automatic and controlling weight to a non-judicial entity's interpretation of statutory language—particularly when that interpretation does not accord with the court's sense of the best interpretation.

II. AGENCY DEFERENCE VIOLATES THE DUE PROCESS CLAUSE BY REQUIRING JUDGES TO SHOW BIAS IN FAVOR OF AGENCIES

A related and more serious problem with agency deference is that it requires the judiciary to display systematic bias in favor of agencies whenever they appear as litigants. *See generally* Philip Hamburger, Chevron *Bias*, 84 Geo. Wash. L. Rev. 1187 (2016).[1] It is bad enough that a court would abandon its duty of independent judgment by "deferring" to a non-judicial entity's interpretation of a statute. But for a court to abandon its independent judgment in a manner that favors an actual *litigant* before the court violates due process of law for the opposing litigant. The U.S. Supreme Court has held that even the *appearance* of potential bias toward a litigant violates the Due Process Clause. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 886–87 (2009). And the Ohio Code of Judicial Conduct mandates that "[a] judge shall uphold and promote the *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of *impropriety*." Ohio Code Jud. Conduct Canon 1 (emphasis in original).[2] It also requires that "[a] judge shall perform the duties of judicial office *impartially*[.]" Ohio Code Jud. Conduct Canon 2 (emphasis in original). Nonetheless, under agency-

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[1] Hamburger explains that "the Constitution prohibits judges from denying the due process of law, and judges therefore cannot engage in systematic bias in favor of the government. Nonetheless, judges defer to administrative interpretation, thus, often engaging in systematic bias for the government and against other parties." *Id.* at 1250.

[2] The Ohio Code of Judicial Conduct defines "Impartial," "impartiality," and "impartially" "to mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." Ohio Code Jud. Conduct at 7. Non-government litigants are a class of parties against whom bias must not be shown.

deference doctrines, otherwise scrupulous judges who are sworn to administer justice impartially somehow feel compelled to remove the judicial blindfold and tip the scales in favor of the government's position. This practice of governmental entity litigant deference must stop.

Judicial deference to executive agencies institutionalizes a regime of systematic judicial bias, by requiring courts to "defer" to agency litigants whenever a disputed question of statutory interpretation arises. *See* Philip Hamburger, *The Administrative Threat* 43 (Encounter Books 2017) ("When the government is a party to a case, the doctrines that require judicial deference to agency interpretation are precommitments in favor of the government's legal position[.]"). Rather than exercise their own judgment about what the law says, granting deference instructs judges to defer to the judgment of one of the litigants before them unless it is clearly wrong.

Imagine a judge who took a step further and openly admitted that he or she would accept a government litigant's interpretation of a statute by default—and that he or she would automatically reject any competing interpretations that might be offered by the non-government litigant unless the government were clearly proven wrong. This is perilously close to what judges do whenever they apply deference doctrines to ambiguous laws in cases where an agency appears as a litigant. The government litigant wins simply by showing that its preferred interpretation of the statute is not "unreasonable or repugnant"—while the opposing litigant gets no such latitude from the court.

III. OTHER STATES ARE ABANDONING JUDICIAL DEFERENCE DOCTRINES OVER INDEPENDENCE AND BIAS CONCERNS

Supreme courts in other states have rejected showing deference to administrative agencies' interpretations of statutes in favor of preserving judicial independence and separation of powers.[3]

[3] Eleven states reject deference in some form or another. Of those states, seven states—Delaware, Arkansas, Kansas, Michigan, Mississippi, Utah, and Wyoming—have judicially rejected deference. Two states—Arizona and Florida—have rejected deference through legislative action or constitutional

Mississippi courts once reviewed agency interpretations of a rule or statute as "a matter of law that is reviewed *de novo*, but with great deference to the agency's interpretation." *Mississippi Methodist Hosp. & Rehab Ctr., Inc. v. Miss. Div. of Medicaid*, 21 So. 3d 600, 606 ¶ 15 (Miss. 2009), *abrogated by King v. Mississippi Military Dep't*, 245 So. 3d 404 (Miss. 2018). Like the appellate court's rationale for agency deference below, the *Miss. Methodist* court had explained that the "duty of deference derives from our realization that the everyday experience of the administrative agency gives it familiarity with the particularities and nuances of the problems committed to its care which no court can hope to replicate." *Id.* But in 2018, the Mississippi Supreme Court rejected this rationale and "abandon[ed] the old standard of review giving deference to agency interpretations of statutes." *King*, 245 So. 3d at 408 ("[I]n deciding no longer to give deference to agency interpretations, we step fully into the role the Constitution of 1890 provides for the courts and the courts alone, to interpret statutes.").

Wisconsin also once showed "great weight deference" to agency statutory interpretations. That practice was originally premised on the same reasoning supporting deference in Ohio. But Wisconsin has now reversed course as well. *See Tetra Tech*, 914 N.W.2d at 33–34 (tracing the roots of its deference doctrine to "language of persuasion" and an "acknowledg[ment] that a change in an ancient practice could have unacceptably disruptive consequences."). Where Wisconsin courts "once treated an agency's interpretation of a statute as evidence of its meaning[,]" the "reach of the deference principle" first expanded to "something the courts could do in the process of interpreting and applying

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amendment. The Supreme Court of Wisconsin and its legislature have both rejected deference. Colorado has rejected *Chevron* and *Brand X* deference. *See* Daniel M. Ortner, *The End of Deference: An Update from Arkansas*, Yale J. on Reg.: Notice & Comment Blog (Apr. 11, 2020), https://www.yalejreg.com/nc/the-end-of-deference-an-update-from-arkansas-by-daniel-m-ortner/; *see also* Daniel M. Ortner, *The End of Deference: An Update from Colorado*, Yale J. on Reg.: Notice & Comment Blog (July 12, 2021), https://www.yalejreg.com/nc/the-end-of-deference-an-update-from-colorado-by-daniel-ortner/.

a statute, but were not required to do." *Id.* at 36, 37. Later, a 1995 decision from the Wisconsin Supreme Court "made the deference doctrine a systematic requirement upon satisfaction of its preconditions" and "[i]t accomplished this feat by promoting deference from a canon of construction to a standard of review." *Id.* The *Tetra Tech* court explained this was an important step in the evolution of the deference doctrine:

> Enshrining this [deference] doctrine as a standard of review bakes deference into the structure of our analysis as a controlling principle. By the time we reach the questions of law we are supposed to review, that structure leaves us with no choice but to defer if the preconditions are met.

Id. at 38.

While Wisconsin courts recognized that this deference doctrine "allowed the executive branch of government to authoritatively decide questions of law in specific cases brought to our courts for resolution," the court never "determine[d] whether this was consistent with the allocation of governmental power amongst the three branches." *Id.* at 40. After concluding that its "deference doctrine cedes to administrative agencies some of our exclusive judicial powers[,]" it "necessarily follow[ed] that when [an] agency comes to [the court] as a party in a case, it—not the court—controls some part of the litigation." *Id.* at 49. "When a court defers to the governmental party, simply because it is the government, the opposing party is unlikely to be mollified with assurances that the court bears him no personal animus as it does so." *Id.*

The *Tetra Tech* court recognized Wisconsin's deference doctrine "deprive[d] the non-governmental party of an independent and impartial tribunal," while granting the "rule of decision" to an "administrative agency [that] has an obvious interest in the outcome of a case to which it is a party." *Id.* at 50. The court thus concluded that "deference threatens the most elemental aspect of a fair trial"—a fair and impartial decisionmaker. *Id.* By rejecting the deference doctrine, the court "merely [] join[ed] with the ancients in recognizing that no one can be impartial in his own cause." *Id.*

Justice Thomas recently underscored the rejection of this same rationale, concluding that agency deference "differs from historical practice in at least four ways." *Baldwin v. United States*, 140 S. Ct. 690, 694 (2020) (Thomas, J. dissenting from the denial of certiorari).

> *First*, it requires deference regardless of whether the interpretation began around the time of the statute's enactment (and thus might reflect the statute's original meaning). *Second*, it requires deference regardless of whether an agency has changed its position. *Third*, it requires deference regardless of whether the agency's interpretation has the sanction of long practice. *And fourth*, it applies in actions in which courts historically have interpreted statutes independently.
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> *Id.* (emphasis added).

In short, no rationale consistent with due process of law can support a practice that weights the scales in favor of a *government* litigant—the most powerful of parties—and that commands systematic bias in favor of the government's preferred interpretations of statutes. Whenever deference is applied in a case in which the government is a party, the courts deny due process to the non-governmental litigant by showing favoritism to the government's interpretation of the law.

IV. THE COURT SHOULD CALL OUT THESE CONSTITUTIONAL PROBLEMS WITH AGENCY DEFERENCE NOTWITHSTANDING THE REQUIREMENTS OF *STARE DECISIS*

Assuming for purposes of argument that *stare decisis* applies, the Ohio Supreme Court has observed that "a supreme court not only has the right, but is entrusted with the duty to examine its former decisions and, when reconciliation is impossible, to discard its former errors." *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 215 (2008) (citing *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 226 (2003)). The test for this Court is whether "(1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it." *Id.* (citation omitted). Thus, while this Court affords great respect to the principles of *stare decisis*, it is not bound by the doctrine, particularly "when constitutional issues are at stake." *See City of Rocky River v. State Emp. Rels. Bd.*, 43 Ohio St. 3d 1, 6 (1989) ("[I]n cases involving

the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error … is appropriate also in the judicial function.") (citing *Washington v. W.C. Dawson & Co.*, 264 U.S. 219, 237 (1924) (Brandeis, J., dissenting)).

Stare decisis therefore presents no obstacle to analyzing these constitutional objections and declaring agency deference unconstitutional. And in all events, a court's ultimate duty is to enforce the Constitution—even if that comes at the expense of judicial opinions that never considered the constitutional problems with what they were doing. *See Graves v. New York*, 306 U.S. 466, 491–92 (1939) (Frankfurter, J., concurring) ("[T]he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."). This approach makes particularly good sense where, as here, this Court has applied judicial deference in a highly inconsistent manner. As Justice R. Patrick DeWine has noted, this Court's "deference 'doctrine' is not really a doctrine at all; it is more like Hogwart's Room of Requirement, where a judge or practitioner truly in need can always find some bit of law equipped for the seeker's purpose." R. Patrick DeWine, *A Few Thoughts on Administrative Deference in Ohio*, Yale J. on Reg.: Notice & Comment Blog (Oct. 26, 2020), https://www.yalejreg.com/nc/a-few-thoughts-on-administrative-deference-in-ohio-by-justice-r-patrick-dewine/.

This case presents an opportunity to address the inherent constitutional deficiencies of judicial deference to executive agencies. Because of the courts' duty to say what the law is, they must opine on the doctrine's failings. *Amicus curiae* respectfully asks the Court to refuse to grant deference to the Board's statutory interpretation and to repudiate agency deference on constitutional grounds—including violation of the due process of law—in its opinion.

The Court should give serious consideration to the above option—if only to avoid the potential hazard agency deference presents to lower courts in Ohio. The Code of Judicial Conduct requires a judge to "disqualify himself or herself in a proceeding in which the judge's *impartiality* might reasonably be questioned, including but not limited to the following circumstances … the judge has a personal bias or prejudice concerning a party." Ohio Code Jud. Conduct Rule 2.11(A)(1) (emphasis in original). Though agency deference involves an institutionally imposed bias rather than personal prejudice, the resulting partiality is inescapable, for the doctrine requires judges systematically to favor an agency's statutory interpretations over those offered by opposing litigants. And judges cannot excuse this bias by invoking their duty to follow precedent, for there is no "superior-orders defense" available in the Code of Judicial Conduct. Hence, these fundamental constitutional questions will continue to haunt punctilious judges until this Court addresses them.

Requiring deference to an administrative agency's interpretations of statutes puts lower-court judges in an impossible situation; it assaults their duty of independence, their judicial oath, and the unbiased due process of law that courts owe to each and every litigant that appears before them. It thus compels them to betray the core responsibilities of judicial office. It is long past time for conscientious judges to call out the ways in which such "deference" has misled the judiciary—and to advocate a return to the judicial independence and unbiased judgment that our Constitution demands.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the court of appeals and declare agency deference unconstitutional. Alternatively, the Court should decline to defer to the Board's statutory interpretations and conclude that firms may employ independent contractors as their engineering managers pursuant to R.C. § 4733.16(D) and Ohio Adm. Code § 4733-39-02(B), while calling out the constitutional defects of judicial deference and remanding for further proceedings consistent with this Court's holding.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 18, 2022, I filed the foregoing vie the Court's electronic filing system, and also served copies of this brief by e-mail as follows:

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