IN THE SUPREME COURT OF OHIO

Bethel Oil and Gas, *et al.*,	:	
	:	Supreme Court Case No. 2024-1696
Appellees,	:	
	:	On appeal from the Ohio Court of
v.	:	Appeals for the Fourth District,
	:	case no. 23-CA-5
Redbird Development, LLC., *et al.*,	:	
	:	
Appellants.	:	

BRIEF OF *AMICUS CURIAE* ON BEHALF OF APPELLANT OF ASSOCIATED BUILDERS AND CONTRACTORS OF CENTRAL OHIO AND ASSOCIATED BUILDERS AND CONTRACTORS OF OHIO

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Associated Builders and Contractors of Ohio
and
Associated Builders and Contractors of Central Ohio

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I. THE AMICUS INTEREST OF ASSOCIATED BUILDERS AND CONTRACTORS OF OHIO AND CENTRAL OHIO

Associated Builders and Contractors of Ohio and Associated Builders and Contractors of Central Ohio (collectively hereafter "ABC") are construction industry trade associations representing approximately seven hundred (700) merit shop construction companies throughout Ohio. Merit shop constructions companies represent about ninety percent (90%) of the construction workforce.

Founded on the merit shop philosophy, ABC helps members develop tradespeople, win work, and deliver that work safely, ethically and profitably for the betterment of Ohio communities. ABC's membership represents all specialties within the United States construction industry, primarily performing work in the industrial and commercial sectors.

Frequently, overly-zealous plaintiffs victimize construction companies through complaints that fail to aver what the defendant-company actually did wrong—leading to abusive discovery, and incentivizing settlement for no other reason than to avoid abusive litigation. This impacts Ohio's construction industry, customers, and taxpayers, unfairly increasing the financial burden of construction, which is passed on to clients. Often those clients are taxpayer-funded.

Thus, this Court should recognize what federal courts recognize—that abusive filings like "shotgun pleadings" fail to put the defendants on notice of the claims against them—and the civil rules provide a fair barrier to this manner of entry.

II. STATEMENT OF FACTS

ABC hereby adopts the statement of the case and facts in Appellants K&H Partners LLC and Tallgrass Operations LLC's (collectively, "Tallgrass"). (Appellant's Mem. Supp. Jurisdiction, at 3-7, Dec. 9, 2024.)

III. ABC URGES THE COURT TO AGREE WITH TALLGRASS'S PROPOSITION OF LAW.

A. The Problem of Shotgun Pleadings.

Tallgrass submitted one proposition of law: Ohio's pleading standard under Civil Rule 8 includes the plausibility requirement outlined by the United States Supreme Court in *Iqbal* and *Twombly*. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

This *amicus* brief supports the Appellants' proposition of law. This *amicus* also supports the *amicus* filed by the Ohio Chamber of Commerce and Ohio Business Roundtable, which goes into great detail concerning the damage that abusive pleadings cause businesses, including construction companies. (Amicus Br., May 2, 2025.)

ABC would like to expand on that *amicus* filing, addressing a frequent and enormous problem in Ohio: "shotgun pleadings." In discussing shotgun pleadings, one court wrote, "[e]xperience teaches that, unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 367 (11th Cir. 1996). Ohio's

construction companies know this all too well.

> In federal court, shotgun pleadings are well-defined.
>
> Though the groupings cannot be too finely drawn, we have identified four rough types or categories of shotgun pleadings.
>
> The most common type — by a long shot — is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.
>
> The next most common type, at least as far as our published opinions on the subject reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.
>
> The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief.
>
> Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.
>
> The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.

Weiland v. Palm Beach County Sheriff's Office, 792 F.3d 1313, 1322-23 (11th Cir. 2015) (citations omitted).

"'Shotgun' pleadings, [are] calculated to confuse the 'enemy,' and the court, so that theories for relief not provided by law and which can prejudice an opponent's case, especially before the jury, can be masked, are flatly forbidden by the [spirit], if not the

[letter], of these rules." *Weiland* at 1320, quoting *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1544 fn. 14 (11th Cir. 1985).

Another case explained why shotgun pleadings are abusive. *Magluta v. Samples*, 256 F.3d 1282 (11th Cir. 2001). "The complaint is replete with allegations that 'the defendants' engaged in certain conduct, making no distinction among the fourteen defendants charged, though geographic and temporal realities make plain that all of the defendants could not have participated in every act complained of." *Id.* at 1284.

Another case followed the same logic and was highly influential with many federal courts. *Destfino v. Kennedy,* 2009 U.S. Dist. LEXIS 18138 (E.D.Cal. Jan. 7, 2009). The plaintiffs alleged that multiple defendants made misrepresentations to induce them into buying mortgages and car loans. *Id.* The court dismissed the complaint because the plaintiffs failed to identify which defendant engaged in which aspect of the alleged fraudulent schemes and had effectively alleged that every defendant did everything the complaint alleged. *Id.* at 17.

The court reasoned that it was not possible that every defendant engaged in every single fraudulent statement and act, as alleged, because the defendants resided both in and outside of California, included both natural persons and business entities, and the alleged complex scheme occurred over a three-year period. *Id*. Thus, the geographic and temporal realities made it clear that not all defendants could have participated in every alleged act. Without greater specificity, it was difficult if not impossible to attribute each

fraudulent act or stated allegation to any particular defendant. The court ordered the plaintiffs to amend or dismiss their complaint. *Id.* This forced a level of discipline on the plaintiffs, that protects the defendants from frivolous attacks.

Destfino is cited as persuasive by several federal courts throughout the United States. *See, e.g., Ames v. Dep't of Marine Res. Comm'r,* 256 F.R.D. 22, 30 (D.Me., Mar. 6, 2009); *Superior Edge, Inc. v. Monsanto Co.,* 44 F.Supp. 3d 890, 898 (D.Minn. Sep. 8, 2014); *Tianhai Lace Co. v. Zoetop Bus. Co*., 2023 U.S. Dist. LEXIS 32406, 9 (C.D.Cal. Feb. 24, 2023); *Simon v. Jones*, 2020 U.S. Dist. LEXIS 270360, 2-3 (M.D.Ala. Sept. 21, 2020).

Our own 6th Circuit, in dozens of cases, follows the logic that shotgun pleadings fail to put defendants on proper notice of claims against them. *See, e.g., Lee v. Ohio Educ. Ass'n,* 951 F.3d 386, 393 (6th Cir. 2019) ("[s]he also failed to separate each of her causes of action or claims for relief into separate counts.").

While cracking down on shotgun pleadings helps construction companies in many ways, the federal rule is not a blanket prohibition. *See, e.g., Kyle K. v. Chapman*, 208 F.3d 940, 944 (11th Cir. 2000) ("The fact that defendants are accused collectively does not render the complaint deficient. The complaint can be fairly read to aver that all defendants are responsible for the alleged conduct."). Additionally, the *Weiland* Court concluded that the claims in question should not have been dismissed pursuant to the federal doctrine of impermissible shotgun pleadings—meanwhile the Court said it "was not retreating from this circuit's criticism of shotgun pleadings." *Weiland,* 792 F.3d at 1326.

B. Deposition Abuse Incentivizes Pleadings Abuse.

One reason shotgun pleadings should not be tolerated in Ohio, is because Ohio is also overly-tolerant of deposition abuse as well—another practice the federal courts have cracked down on. Discovery responses, especially depositions, are expensive, time-consuming, and intrusive. Often parties will settle frivolous lawsuits because they want to avoid discovery burdens. Many attorneys—especially experienced attorneys who know the common practices of judges that go beyond the Rules—file shotgun pleadings just so they can abuse discovery.

The vast majority of civil cases filed in Ohio and federal courts result in disposition by way of settlement or pretrial adjudication. Very often, these results turn on evidence obtained during depositions. Thus, depositions play an extremely important role in the American system of justice.

In one case regarding a motion for sanctions for discovery abuse, the court said, "[t]his entire sanctions inquiry, with five days of hearings, myriad pleadings, hundreds of pages of testimony, lawyers defending and attacking lawyers, and client and counsel disputing each other, might have been avoided if the reservoir of trust between counsel had not been dissipated by deposition abuse and the unfounded overstatement concerning the evaluations. *Phinney v. Paulshock*, 181 F.R.D. 185, 207 (D.N.H. Jun. 4, 1998).

For these reasons, federal courts began cracking down on discovery abuse many years ago. David B. Markowitz and Justice Nakamoto, *Sanctions for Deposition Misconduct*

Under FRCP 30(d), Oregon State Bar Lit. J., Vol. 22, No. 2 (August, 2003).

The pages of court records contain too many sanctions for deposition misconduct to list, but here are a few examples: *Deville v. Givuadan Fragrances Corp*., 419 F. App'x. 201, 207 (3rd Cir. 2011) (upholding sanctions for abusive, unprofessional and obstructive conduct during deposition); *Specht v. Google, Inc*., 268 F.R.D. 596, 598-599, 603 (N.D.Ill. Jun. 25, 2010) (imposing sanctions for speaking objections that obstructed the deposition); *BNSF Ry. Co. v. San Joaquin Valley RR Co*., 2009 WL 3872043, 3 (E.D.Cal. Nov. 17, 2009) (imposing sanctions for inappropriate and burdensome objections); *Lucas v. Breg*, 2016 WL 2996843, 2-4 (S.D.Cal. May 13, 2016) (sanctions for deposition conduct that included speaking objections, improper commentary disrupting the deposition, and improper instructions not to answer); *Claypole v. County of Monterey*, 2016 WL 14557, 3-5 (N.D.Cal. Jan. 12, 2016) (sanctions for deposition conduct that included long speaking objections, coaching witness, cutting off witness, and disrespectful conduct by stating to opposing counsel "don't raise your voice at me. It's not becoming of a woman …"); *Lund v. Matthews*, 2014 WL 517569, 4-6 (D.Neb. Feb. 7, 2014) (sanctions for coaching objections including whispering into deponent's ear and instructing not to answer based on "asked and answered").

Nonetheless, Ohio fails to discipline this sort of conduct—providing little protection against lawyers and parties who abuse lawsuits or discovery. One case in particular provides a look at the frustration litigants face. *Hook-n-Haul, LLC. v. Cincinnati*

Insurance Companies, Medina C.P. no. 21civ0920 (Jul. 3, 2024).

In *Hook-n-Haul,* the Plaintiff moved for sanctions against an attorney who harassed opposing counsel, interrupted constantly, and coached the witness (his client) throughout a deposition. The Plaintiff claimed this lawyer shuffled papers loudly, falsely claimed he was threatened physically, and made noises, knowing the record would not include these purposeful distractions. The Plaintiff's Motion provided a lengthy explanation, affidavits, and pinpoint citations to the transcript record. (*Hook-n-Haul*, Mot. Sanctions, May 21, 2024.) With no hearing, the entirety of the Court's response to Plaintiff's Motion was as follows: "Plaintiff's Motion for Sanctions for Misconduct During a Deposition is not well taken and is hereby DENIED." (Dec., Jul. 3, 2024.)

If Ohio cracks down on discovery abuse, Ohio will have less pleadings abuse. The time to crack down on abuse is now. Federal courts provide a persuasive approach to reign in these violations of Ohio's Civil Rules.

C. Why this Case is an Example of Pleadings Abuse.

ABC's counsel could only locate one Ohio case that attempts to discuss shotgun pleadings at all—the appellate court decision being appealed herein. *Bethel Oil & Gas, LLC v. Redbird Dev., LLC*, 4th Dist. Washington 23CA5, 2024-Ohio-5285 (saying that a "shotgun pleading" is a pleading that "attempt[s] to hold different defendants accountable for each other's acts without ever alleging specifically what any one of them did.").

Here, the case before this Court is similar to some construction cases. Specifically

this case is about the construction of several oil wells, which the Appellee-Plaintiff argues leaked contaminants onto their property.

"Although each defendant framed the argument in a slightly different manner, they all raised some variation of the argument that appellants' complaint does not contain sufficient facts to give them notice of the basic 'who', 'what', 'when', and 'where' so that [the defendants] may know at least the bare minimum about the claims against them." (Dec. Court of Appeals, citing Redbird's Motion to Dismiss at 8.)

Here, the Ohio pleading standard was met, even though the complaint is replete with allegations that each and every one of sixteen (16) defendants engaged in certain conduct, making no distinction among the sixteen (16) defendants charged, though geographic and temporal realities make plain that all of the defendants could not have participated in every act complained of.

The Appellants (i.e., the complainants) ask the court to allow full discovery based purely on circumstantial evidence that fails to link the plaintiff to the damages.

> Appellants do not agree with appellees' characterizing their complaint as a "shotgun" complaint. Appellants assert that they "made the same allegations against all defendants below because they all engage in the same wrongful conduct." They contend that their complaint "alleges actionable damage to their mineral estate from each defendant, and identifies a number of factors providing a basis for bringing the identified claims against" each defendant. Some of those factors include the following: (1) "the documented contamination of [a]ppellants' wells by Redbird #4 Class II Injection Well waste fluid"; (2) "other oil and gas wells in the region have been similarly contaminated"; and (3) "the nature of demonstrated impacts to oil and gas wells from contamination, including significantly increased pressures from the volume of waste fluid contamination, similarities in the

> type and scope of operations each defendant has conducted, the proximity of each defendant's injection well to [a]ppellants' wells in comparison to documented sources of contamination, and physical characteristics of each [appellee]'s operations (including depth of wells and the geological features of the ground drilled)."
>
> (Dec. Court of Appeals, Appendix, Mot. Dismiss, Appellee's Replies.)

Basically, the Appellees sued every oil well owner they could find, anywhere near the property. Appellees have no idea if they are imposing an unfair burden of legal expense on any party they sued. Without some allegation that an individual or individual company did something illegal, they should not have to endure abusive litigation.

Here, Ohio's pleading standard failed to dispense with a classic case of abusive shotgun pleadings. This Court can remedy this problem in this case.

IV. CONCLUSION

For the reasons set forth above, disciplining the pleadings process in Ohio by eliminating shotgun pleadings will improve our judicial system, culture among civil litigators, and our construction industry. Construction companies are frequent targets of shotgun pleadings and ask that they be recognized explicitly as a violation of the Ohio Rules of Civil Procedure.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I served a copy of this document via electronic mail on May 21, 2025 upon:

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