

In the
Supreme Court of Ohio

ADAM KOHN,	:	Case Nos. 2025-0737, 2025-0818
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
GLENMEDE TRUST COMPANY, N.A.,	:	
et al.	:	Court of Appeals
	:	Case No. CA-24-113863
Defendants-Appellants.	:	

**BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL
DAVE YOST IN SUPPORT OF APPELLEE**

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* Pursuant to this Court’s order, *12/24/2025 Case Announcements*, 2025-Ohio-5682, *Amicus Curiae* Ohio Attorney General submits this brief in Case No. 2025-0737. It is identical to the Attorney General’s brief submitted in Case No. 2025-0818 on December 10, 2025.

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INTRODUCTION

This Court held in *McCullough v. Bennett* that Ohio’s Saving Statute, R.C. 2305.19(A), permits plaintiffs to re-file actions as long as they do so within one year of a qualifying reversal or non-merits failure. 2024-Ohio-2783, ¶¶2, 14. In doing so, *McCullough* clarified that there is no one-use rule for the Saving Statute. But lower courts in Ohio have been applying that precedent inconsistently—sometimes wholesale reviving the one-use rule—leading to unpredictable outcomes across different districts in the State. This case is a good example: both parties and the lower court frame this case as asking when the one-use rule attaches to claims that were time-barred at various points in time. And, because there were multiple subsequent filings, it raises related questions like—What should a court do if some of the claims were past the statute of limitations before the second filing and had to “use up” their one shot at the Saving Statute? Does the one-use rule bar all the claims in the third filing, or does it bar only those that have already “used up” their one shot? This claim-by-claim approach and the adjacent questions miss the point entirely. Because there is no one-use rule at all, it does not matter when the first use “attaches.” This Court should take this opportunity to answer the question presented by the proposition of law by explaining the law and putting the lower courts in synchrony on the Saving Statute.

STATEMENT OF AMICUS INTEREST

The Attorney General is “the chief law officer” of Ohio and litigates on behalf of “the state and all its departments.” R.C. 109.02. He is interested in ensuring the

uninform application of the Saving Statute across the State so that the rules governing litigation are orderly and predictable.

STATEMENT OF THE CASE AND FACTS

I. **Ohio’s Saving Statute permits re-filing a case outside the statute of limitations in some instances.**

The idea behind saving statutes—allowing cases to be refiled outside their time limits in some circumstances—is about as old as statutes of limitations. With a few exceptions, England had no statute of limitations until 1623. Thomas E. Atkinson, *Some Procedural Aspects of the Statute of Limitations*, 27 Colum. L. Rev. 157, 165 (Feb. 1927), <https://www.jstor.org/stable/1113772> (“Aspects”). In that year, Parliament passed “An Act for Limitation of Actions, and for avoiding of Suits in Law.” 21 Jac. 1, c.16, *available in IV Chitty’s Collection of Statutes of Practical Utility* 85–92 (4th ed. 1880, J. M. Lely ed.), https://www.google.com/books/edition/Chitty_s_Collection_of_Statutes_of_Pract/z8yQW_e7ef4C?hl=en. From the beginning, the English Limitations Act provided for plaintiffs to re-file their cases in certain circumstances, even if outside the statute of limitations. It provided that if a “judgment be given for the plaintiff” or “a verdict pass for the plaintiff,” but later that win is “reversed by error” or blocked by “arrest of judgment,” such that “he take nothing by his plaint, writ, or bill,” then “in all such cases the party plaintiff ... may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment be given against the plaintiff.” 21 Jac. 1, c.16, §4. It also provided similarly if the defendant was declared an outlaw, which stymied the suit, but later had his outlawry reversed. *Id.*; *see also* The National Archives, *Outlaws and*

outlawry in medieval and early modern England, <https://perma.cc/8YCA-ZGLR>. The Limitations Act was both longstanding and highly influential, including on the later American statutes of limitation. Atkinson, *Aspects* at 165.

Ohio adopted a saving statute early in its statehood. Ohio has had some form of a statute of limitations since its days as a territory. Chapter 10, *Laws Passed in the Territory of the United States North-West of the River Ohio, from the Commencement of the Government to the 31st of December, 1791*, 33–34 (1792). Neither this pre-State law nor the first statute of limitations in the State code had a provision governing re-filing of actions outside the statute of limitations. *Id.*; 2 Ohio Laws 60 (1804). But beginning in 1810, the law provided that “if in any action or suit, commenced within the time limited by this act, judgment be arrested or reversed, and the time limited as aforesaid expires, the plaintiff may bring a new action : *Provided*, he do it within one year after such judgment has been arrested or reversed.” 8 Ohio Laws 62, 63 (1810). That provision has remained in the code, with periodic updates, ever since. *See, e.g.*, 22 Ohio Laws 325 (1824); 29 Ohio Laws 214, 216 (1831); 51 Ohio Laws 57, 61 (1853).

Today, the Saving Statute houses the legislature’s instructions on when a plaintiff may refile his suit outside the statute of limitations. It provides:

In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff’s representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff’s failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs

later. This division applies to any claim asserted in any pleading by a defendant.

R.C. 2305.19(A).

II. The lower court used a one-use rule when applying the Saving Statute to Kohn's third filing.

Adam Kohn alleged that Glenmede Trust Company committed misconduct between November 2014 and May 2015. *Kohn v. Glenmede Tr. Co.*, 2025-Ohio-1058, ¶¶4, 24 (8th Dist.) (“App.Op.”). He sued in November 2016. *Id.* at ¶5. Everyone agrees that he filed this first complaint in time for all his claims. In September 2017, Kohn voluntarily dismissed his complaint. *Id.* at ¶6; see Civ.R. 41(A)(1)(a). Just under one year later, Kohn filed for a second time in September 2018. *Id.* In August 2022, the trial court dismissed the case without prejudice. *Id.* A few months later, Kohn filed for a third time in January 2023. *Id.*

Kohn's complaint had a mix of claims, with the different claims carrying statutes of limitation of different lengths. The parties agree that Kohn filed his first complaint before any of the statutes of limitations had run. But in the following years, the statutes of limitations ran out on some of the claims while the case was pending. *Id.* at ¶24. Here is a timeline of the events described above:

- November 2014 to May 2015: Alleged misconduct
- November 2, 2016: First filing
- September 15, 2017: Rule 41(A)(1)(a) dismissal
- Before second filing: two-year statutes of limitation run
- September 11, 2018: Second filing
- August 2, 2022: Trial court's dismissal without prejudice

- Before third filing: four-year statutes of limitation run
- January 3, 2023: Third filing

Id. at ¶¶4–6.

Because of this timing, the Saving Statute came into play. The trial court held that Kohn could not use the Saving Statute to refile his case for the third time. It noted that “[t]he dispositive issue” was “whether the Savings Statute may be invoked more than once to re-file a case.” *Kohn v. Glenmede Truist Co.*, No. CV-23-973271, at 7 (Cuyahoga C.C.P., March 26, 2024). Under binding Eighth District precedent at the time, the answer was “no,” so the court dismissed the case. *Id.* at 7–8.

When the appeals court applied the Saving Statute, it divided up Kohn’s claims into those that had expired before the second filing and those that had not yet expired at the time of the second filing. App.Op.¶27. It treated the two sets of claims differently because, in its words, “the negligence claims subject to the expired two-year statute of limitations were ‘saved’” by the Saving Statute when Kohn filed the second time, but the “four-year statute of limitations applicable to the fraud, breach-of-contract, and promissory-estoppel claims had not yet expired” when Kohn filed the second time “and, therefore, did not need to be ‘saved.’” *Id.* In other words, the court held that Kohn had used up his one use of the Saving Statute on the claims with the shorter statute of limitations, but he had not used it up on the claims with the longer statute of limitations.

Between when the trial court issued its decision and when the Eighth District decided the appeal, this Court announced its decision in *McCullough v. Bennett*, 2024-

Ohio-2783. The Eighth District acknowledged *McCullough* but concluded that it did not affect the outcome. It read *McCullough*'s holding to be “that Ohio’s saving statute is not limited by a one-use restriction, meaning that a plaintiff may refile a claim a third time as long as the second refiling occurs prior to the expiration of the statute of limitations.” App.Op.¶26.

At Glenmede’s request, the Eighth District certified a conflict between its decision and a Fifth District case, *McGowan v. Family Medicine, Inc.*, 2002-Ohio-4071 (5th Dist.). Journal Entry at 1 (filed May 8, 2025). The Eighth District explained that it held in this case “that the saving statute can be used to save individual claims even when other claims in the action are barred by the applicable statutes of limitations.” It further explained that the Fifth District had held in *McGowan* that “the saving statute’s reference to ‘any action’ requires dismissal of all claims, including those filed within the applicable statutes of limitations, if one or more other claims in the action are time-barred.” *Id.* at 2 (citing *McGowan*, 2002-Ohio-4071). In other words, the Eighth and Fifth Districts disagreed on how to apply the one-use limit they read into the Saving Statute—disagreeing on whether the one use attaches to all claims regardless of the time bar or whether it attaches only to those claims that were time-barred when the Saving Statute was first used. Glenmede Trust also filed a memorandum in support of a jurisdictional appeal, which raised the same issue as the certified question.

ARGUMENT

Appellant’s Proposition of Law:

R.C. 2305.19, the savings statute, expressly applies to an “action” as a whole, and a court may not rely upon the savings statute to preserve some refiled claims but not others.¹

The lower court and parties thought the question that mattered was how to apply a one-use rule under the Saving Statute. But the real answer to the question behind the proposition of law is found in whether there is a one-use rule at all.

This Court already answered that question in the negative, but some courts are misreading its directive. This case presents an opportunity to clarify this Court’s prior opinion that there is no one-use rule in the text of the Saving Statute.

I. The Saving Statute has no one-use rule.

This Court has already explained that the Saving Statute, by its plain language, does not impose a one-use limit. In *McCullough*, the trial court had dismissed the plaintiff’s case twice without prejudice. *McCullough*, 2024-Ohio-2783 at ¶1. When the plaintiff filed for the third time—by then, past the statute of limitations—the parties disagreed on whether the Saving Statute could apply to the third filing. This Court said “yes.” As the Saving Statute requires, the “third action was ‘commence[d] ... within one year after ... the plaintiff’s failure otherwise than upon the merits’ on his second complaint,” and imposing any “one-use” limit would require the Court “to

¹ This Court also accepted the certified conflict presenting the following question: “Does the saving statute, R.C. 2305.19(A), apply to save a refiled ‘action’ as a whole or does it apply to save refiled ‘claims’ independently?” *09/03/2025 Case Announcements*, 2025-Ohio-3107. This Court then dismissed the certified conflict for want of prosecution. *11/18/2025 Case Announcements*, 2025-Ohio-5187. As of the date of this filing, Kohn’s motion for reconsideration of that dismissal is pending.

go beyond the language of the saving statute.” *Id.* at ¶2 (brackets and ellipses in original). Instead, the Court “adhere[d] to what the statute says.” *Id.* In doing so, it disclaimed reliance on dicta from a previous case that had said, under a previous version of the Saving Statute, that plaintiffs could invoke the Saving Statute only once in a given case. *Id.* at ¶16–18 (citing *Thomas v. Freeman*, 79 Ohio St. 3d 221 (1997)).

This Court also addressed the purported practical concern that the statute’s plain meaning could cause: “the danger that a plaintiff could indefinitely extend the expiration of the statute of limitations by convincing a trial court to order serial dismissals without prejudice.” *Id.* at ¶20. It noted that such a concern was not at issue in *McCullough* because the plaintiff had not engaged in such gamesmanship; his first two filings were within the statute of limitations. *Id.* It also noted that trial courts have plenty of control over such gamesmanship. For one, a second voluntary dismissal under Civil Rule 41(A)(1) would be an adjudication on the merits, which would prevent the Saving Statute from applying to the next filing. *Id.* at ¶21. For another, a trial court can prevent “abusive refilings” using Civil Rule 41(A)(2) “by specifying that any dismissal under Civ.R. 41(A)(2) is with prejudice” if the plaintiff is abusing the system. *Id.* at ¶22. These practical answers rained out the parade of horrors that some said would accompany the rejection of the one-use rule. But they were not part of the Court’s holding.

II. The district courts of appeal are split on whether the one-use rule lives on despite *McCullough*.

Despite *McCullough*'s holding, the lower courts have failed to apply it uniformly because they have interpreted its result differently. Some courts have correctly read *McCullough* as straightforwardly invalidating a one-use restriction on the Saving Statute. The Seventh District, for example, has explained, “*McCullough* held that [the Saving Statute] does not have a ‘one-time-use’ restriction, and specifically rejected the dicta contained in *Thomas*.” *Bell v. Ohio Living Communities*, 2024-Ohio-4843, ¶3 (7th Dist.). The Tenth District has also correctly noted *McCullough*'s holding, although the case at issue was dismissed for failure to re-file within a year. *Khatri v. Ohio State University*, 2024-Ohio-4700, ¶¶39–40 (10th Dist.).

Other courts do not read *McCullough* the same way. In *Battaglia v. Donegan*, the Eighth District found its case “distinguishable from *McCullough*” because the *Battaglia* plaintiff's three complaints included two that were filed outside of the statute of limitations rather than one. 2024-Ohio-6022, ¶36. And although it recited *McCullough*'s holding, it focused on the comments about the practical concerns. *Id.* at ¶39. In the end, it noted that “the saving statute cannot permit the refiling of claims into perpetuity because to do so would defeat the statute of limitations,” so the court said it must “consider the saving statute in the context of the statute of limitations.” *Id.* The Eighth District likewise acknowledged *McCullough*'s holding, while distinguishing *McCullough* and considering the policy concern of limitless re-filing, in both a companion case to *Battaglia* and in a later case. *See, e.g., Giles v.*

Donegan, 2024-Ohio-6023, ¶¶33–34 (8th Dist.); *Pincus v. Pincus*, 2025-Ohio-1826, ¶¶22–23 (8th Dist.).

Others simply have applied the wrong rule, reading *McCullough* as permitting limitless re-filings while still inside the statute of limitations, but only one after the statute of limitations expires. *See, e.g., Quellos v. Johnson*, 2024-Ohio-5804, ¶¶3, 11 (8th Dist.); *Curry v. Spherion of Mid-Ohio, Inc.*, 2024-Ohio-5645, ¶¶14–15 (5th Dist.). On this logic, re-filing within the original statute of limitations does not “use up” the one chance to invoke the Saving Statute—meaning this theory rests on the idea that the one-use rule lives on. As far as this district split goes, the Fifth and Eighth Districts are on the same side because they both apply a one-use rule. The split that the proposition of law highlights—disagreement about *how* to apply a one-use rule—is focused on the wrong question if *McCullough* indeed put an end to the one-use rule altogether.

III. This Court should clarify the Saving Statute.

With the correct interpretation of *McCullough* in mind, the proposition requires an answer different from what appellant envisioned. The proposition is, “R.C. 2305.19, the savings statute, expressly applies to an ‘action’ as a whole, and a court may not rely upon the savings statute to preserve some refiled claims but not others.” That makes sense only if the Saving Statute can be “used up” for some claims—likely those with a shorter statute of limitations—while other claims still have their “one use” of the Saving Statute remaining. But if there is no one-use limit on the Saving Statute, then they all are “saved” just the same when they are included in a re-filing within one year of the non-merits dismissal.

For the sake of litigants in Ohio, this Court should clarify the law. That is all the more important here, where the lower courts are split on the underlying question of whether the one-use rule exists at all. If the lower courts do not follow *McCullough*'s holding, then in many districts, plaintiffs have no clear warning on whether their cases will be eligible for re-filing even if they meet the requirements in the Saving Statute's text. Likewise, defendants cannot know whether to move to dismiss because they do not know what standard applies to post-limitations re-filings.

Moreover, uncertainty plants the seeds of gamesmanship for both sides. Trial courts wield their tools less effectively if they do not know which approach to use—does the Saving Statute contain the limit on plaintiffs' re-filings, or does the court need to specify the dismissal to be with prejudice? Meanwhile, defendants can attempt to extinguish a case on a technicality by postponing non-merits dismissals until after the statute of limitations—sandbagging that drains courts' and litigants' limited resources.

For all practical purposes, *McCullough* is the law only in some districts today. Only this Court can homogenize the law, and it should.

CONCLUSION

For the above reasons, the Court should reverse the Eighth District's decision.

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I hereby certify that a copy of the foregoing Brief of Amicus Curiae Ohio Attorney

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