

IN THE SUPREME COURT OF OHIO

State of Ohio on Relation of Associated
Builders & Contractors of Central Ohio
2222 Wilson Road
Columbus, OH 43228

and

State of Ohio on Relation of
The Painting Company
6969 Industrial Parkway
Plain City, OH 43064

Relators,

v.

Kimberly A. Zurz, Director, The Ohio
Department of Commerce
In her official capacity
77 South High Street
Columbus, OH 43215

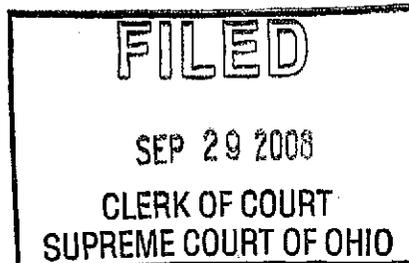
and

Nancy Rogers, Ohio Attorney General
In her official capacity
30 E. Broad Street, 30th Floor
Columbus, OH 43215

Respondents.

08-1923

Original Action Seeking
Writs of Prohibition; Alternative Writs
of Mandamus; Alternative "Other Writs"



**BRIEF IN SUPPORT OF WRITS OF PROHIBITION; ALTERNATIVE WRITS OF
MANDAMUS; ALTERNATIVE "OTHER WRITS"**

Michael F. Copley (0033796) (Counsel of Record)
The Copley Law Firm, LLC
1015 Cole Road
Galloway, Ohio 43119
Telephone: (614) 853-3790
Facsimile: (614) 467-2000
E-mail: mcopley@copleylawfirmllc.com

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I. STATEMENT OF THE FACTS

The Ohio Department of Commerce or its designee (the “Department”), administers Ohio’s prevailing wage laws, governed by Ohio Revised Code Chapter 4115. When a prevailing wage complaint is filed against a contractor, the Director of Commerce reviews the complaint and investigates the matter. R.C. § 4115.13(A). At the completion of the investigation, if the director determines that inadvertent underpayment of an employee occurred, the Department has the power to issue a determination and order the contractor to pay restitution. *Id.* Once such a determination is issued, the contractor has no right to a hearing or to appeal the determination. R.C. § 4115.13(C). If a contractor refuses to pay the ordered restitution, either the complaining employee or the director, through the Attorney General, may file a lawsuit against the contractor. R.C. § 4115.10(C). Where the director determines the contractor’s determination to be intentional, the contractor has the right to seek a hearing. R.C. § 4115.13(A).

Ohio’s Prevailing Wage law does not procedurally provide for the Department to take any additional extra-judicial or post-judicial acts to record, give notice of, or report a determination or “violation” beyond those provided in R.C. Chapter 4115. Regardless, the Department is keeping a list or records of determinations issued against Ohio contractors, the merits of which have not been adjudicated at a hearing or in a court of law, and many of which have been settled between the State and the contractor out of court. Complaint at ¶ 19. The Department is and has distributed the information contained in this list or records to local officials, couching these unadjudicated determinations as violations of the law. *Id.* at ¶ 20.

In the past ten years, Relator The Painting Company (“TPC”) has had fifteen prevailing wage complaints filed against it and has received prevailing wage determinations as a result thereof. *Id.* at ¶ 22. Three complaints resulted in “zero” determinations; all were determined to

be inadvertent. *Id.* at ¶ 23. TPC disputed and refused to pay on the allegations, resulting in the Attorney General filing a lawsuit on behalf of the Department. *Id.* at ¶ 24. These prevailing wage disputes were settled through mediation. *Id.* at ¶ 26. The settlement agreement with the Department and the Attorney General, which resulted in dismissal with prejudice of all allegations, contained a non-admissions clause, stating:

It is understood and agreed by Commerce that this release constitutes a compromise settlement of the disputed claim or claims and that payment by The Payment Company of the above-stated settlement is not to be construed and does not constitute an admission of liability or wrongdoing on the part of The Painting Company.

Id. at 27 (emphasis added.) TPC has not taken part in any hearings or trials as to any of the determinations issued against it. *Id.* at ¶ 32.

This case arises from the disqualification of TPC's bid on a Franklin County Board of Commissioners' ("the Commissioners") painting project ("the Project"), despite TPC being the low bidder and being approved by two independent companies hired by the Commissioners. *Id.* at ¶ 44-46. Section 8.2.4.15 of the Quality Contracting Standards adopted by the Commission in 2002 requires contractors bidding on Franklin County projects to certify that they "ha[d] not been debarred from public contracts or found by the state (after all appeals) to have violated prevailing wage laws more than three times in a two-year period in the last ten years." *Id.* at ¶ 38 (emphasis added). The Commissioners contacted the Department to inquire about TPC's prevailing wage history. *Id.* at ¶ 47. The Department sent to the Commissioners a list of the fifteen determinations. *Id.* at ¶ 48. Despite being unadjudicated and settled pursuant to the non-admission clause, the Department couched the determinations as "findings" of violations of the prevailing wage laws. *Id.* Incorrectly relying on the Department's "findings" of violations of the

law, the Commissioners determined TPC did not meet the Quality Contracting Standards and disqualified its bid. *Id.* at ¶ 49, 52, 62.

II. LAW AND ARGUMENT

Respondents are trampling upon Relators' fundamental constitutional rights to due process, depriving Relators of their protected liberty interests without a hearing, besmirching their reputations, and destroying their ability to enter government contracts. This Court has firmly held that the Department's preliminary prevailing wage determinations issued without a prior hearing are "invalid" and "not an adjudication." *State ex rel. Harris v. Williams* (1985), 18 Ohio St.3d 198, 201, 202, 480 N.E.2d 471. Respondents have elected to ignore this Court. In reports compiled, maintained and sent by the Department to localities seeking prevailing wage information of individual contractors, the Department falsely characterizes these "invalid" preliminary determinations as actual "findings" of adjudicated "violations" of the law, even though no adjudication of wrongdoing has been made and/or the determinations were settled without an admission of wrongdoing. In doing so, Respondents are acting as judge and jury, convicting contractors of violations of Ohio law to devastating effect without affording them basic due process. Only this Court can protect Relators' constitutional rights as the State and Franklin County refuse to act. The time to act is now.

A. Relators' Propositions of Law

Proposition of Law I: Respondents should be prohibited from wrongfully reporting Relators as having prevailing wage "violations" based upon unadjudicated "determinations"

This case involves a substantial constitutional question relating to Relators' due process rights under the United States and Ohio Constitutions. The United States Constitution prohibits deprivation of "life, liberty, or property, without due process of law[.]" U.S. Const. Am. XIV

(emphasis added). Article I, Section 16 of the Ohio Constitution provides that “[a]ll courts shall be open, and every person, for an injury done in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.” (emphasis added). Relators have a liberty interest in their professional reputations that demands due process under the Ohio Constitution. Relators possess a liberty interest in being able to conduct business and bid on government contracts. See *Transco Sec. Inc. of Ohio v. Freeman* (6th Cir. 1981), 639 F.2d 318 (a contractor’s “liberty interest is affected when that denial [of opportunity to bid and be awarded public contracts] is based on charges of fraud and dishonesty...”). Respondents, in reporting preliminary determinations as “findings” of “violations” of prevailing wage laws and not enforcing their settlement agreements, are depriving Relators of their liberty interests without due process, devastating contractors’ reputations and ability to contract. The hallmark of due process is an appropriate opportunity to be heard. *United Tel. Credit Union v. Roberts* (2007), 115 Ohio St.3d 464, 468, 875 N.E.2d 927.

Section 8.2.4.15 of Franklin County’s Quality Contracting Standards requires contractors that bid on Franklin County projects to certify that they had “not been debarred from public contracts or found by the state (after all appeals) to have violated prevailing wage laws more than three times in a two-year period in the last ten years.” (emphasis added). As the term “found” is not defined by Franklin County or in Ohio’s prevailing wage laws, it must be given its usual meaning. The term “found” is the past tense of “to find” and is often expressed synonymously with the term “finding.” Black’s Law Dictionary defines “find” to mean “[t]o determine a fact in dispute by verdict or decision.” *Black’s Law Dictionary* (8th ed. West, 2004). A “finding” is defined as “[t]he result of a deliberation of a jury or court.” *Id.* “Webster defines “finding” as the result of a judicial determination or inquiry. The result would indicate an

outcome or finality.” *B & L Motor Freight, Inc v. Kiehne* (Ohio App. 5th Dist.), Case No. CA-2871, 1982 WL 5526, *1. Thus, under the common usage of the term, to have “found” a violation of the prevailing wage laws requires there have been a final judicial determination or adjudication. There has not been one in this case.

The Commissioners admit in their Memorandum Opposing Jurisdiction filed with this Court in Case No. 08-1478 that they “relied upon information provided by the Ohio Department of Commerce” as “a basis for determining that The Painting Company had been found by the state to have violated Ohio prevailing wage laws...” Complaint at ¶ 62, Ex. C at 2. The Commissioner later repeat this admission on page six of its Memorandum. *Id.* (“Additionally, the Board’s reliance on the information, regarding The Painting Company’s prevailing wage violations, as provided by the Ohio Department of Commerce...”). By the Commissioners’ own words, it is the State’s reporting of unadjudicated and settled determinations as actual “findings” of prevailing wage “violations” that directly caused TPC to lose its contract with Franklin County despite being the lowest bidder. Under R.C. Chapter 4115, it is the Department who is tasked with “finding” a “violation” of the prevailing wage laws, after affording the contractor due process, not Franklin County.

This Court’s decision of *State ex rel. Harris v. Williams* (1985), 18 Ohio St.3d 198, 201, 202, 480 N.E.2d 471, governs this case. In *Harris*, a contractor brought an action in the Franklin County Court of Common Pleas seeking to appeal a prevailing wage determination. *Id.* at 198-99. Neither the Department nor a trial court had held a hearing on the determination. *Id.* This Court held that the Department’s determination was “invalid” and “not an adjudication” and, therefore, was not a final decision of a “violation” of Ohio’s prevailing wage laws subject to appeal. *Id.* at 201-02. To bolster its decision in *Harris*, this Court wisely relied upon *Georator*

Corp v. EEOC (4th Cir. 1979), 592 F.2d 765, and compared the determination to the right to sue letter provided by the EEOC under the Civil Rights Act at issue in *Georator. Harris*, 18 Ohio St.3d at 200. Applying *Georator*, a prevailing wage determination is not final and appealable because “[s]tanding alone, it is lifeless, and can fix no obligation nor impose any liability on the plaintiff. It is merely preparatory to further proceedings.” *Georator*, 592 F.2d at 768. Under *Harris* and *Georator*, a “lifeless” prevailing wage determination cannot be a “finding” by the State of a violation of the law.

These prevailing wage determinations are no longer “lifeless.” They have had significant adverse impacts on TPC and will continue to have detrimental effects on contractors throughout Ohio. “When the preliminary determination is without legal effect in and of itself, due process will be satisfied if there is an opportunity to be heard before any final order of the agency becomes effective.” *Georator*, 592 F.2d at 768-69. The U.S. Supreme Court has further held that “when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process.” *Hanna v. Larche* (1960), 363 U.S. 420, 442, 80 S.Ct. 1502. By considering and reporting the determinations at issue to be “findings” of violations of the law, the State has imputed upon the determinations binding legal effect directly impacting Relators’ legal rights without a hearing or the benefits of the judicial process, in violation of the due process clause of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution. The preliminary determinations considered by this Court in *Harris* were not supposed to have such wide-reaching effects as were seen here.

Proposition of Law II: The State of Ohio is bound by its agreements that attest prevailing wage laws have not been adjudicated

The State and TPC mutually entered into a binding settlement agreement, prepared by the Attorney General, settling without an admission of wrongdoing by TPC six of the Department's prevailing wage determinations. The fourth recital in the settlement agreement provides: "WHEREAS, Commerce and The Painting Company have successfully negotiated a settlement of the dispute, without any acknowledgement of legal liability by The Painting Company." The State released and forever discharged TPC

from any and all claims, charges, penalties, attorney fees, interest, or causes of action arising out of or in any way concerning, directly or indirectly, claims against The Painting Company for the alleged underpayment of prevailing wages by The Painting Company for work performed on the Projects.

Further, the settlement agreement contained an unambiguous non-admission clause, stating:

It is understood and agreed by Commerce that this release constitutes a compromise settlement of the disputed claim or claims and that payment by The Payment Company of the above-stated settlement is not to be construed and does not constitute an admission of liability or wrongdoing on the part of The Painting Company.

(emphasis added). By entering into the agreement, the State has agreed that there has been no adjudication of guilt, liability or wrongdoing against TPC for the subject prevailing wage determinations

This Court has held that "a settlement is not tantamount to an admission of liability." *Fidelholtz v. Peller* (1998), 81 Ohio St.3d 197, 201, 690 N.E.2d 502. When construing any written document, including a settlement agreement, a court's "primary and paramount objective is to ascertain the intent of the parties." *Aultman Hosp. Assn. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 53, 544 N.E.2d 920. Courts generally "presume that the intent of the parties to a contract resides in the language they chose to employ in the agreement." *Kelly v. Medical Life*

Ins. Co. (1987), 31 Ohio St.3d 130, 509 N.E.2d 411, paragraph one of the syllabus.” Further, In interpreting a contract, this Court has repeatedly held that “where the terms in an existing contract are clear and unambiguous, [a] court cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Alexander v. Buckeye Pipeline Co.* (1978), 53 Ohio St.2d 241, 246, 374 N.E.2d 146.

TPC’s settlement agreement, including its non-admissions clause, is clear and unambiguous and should be interpreted and enforced as written. It releases all claims against TPC related to any allegations of underpayment of employees, and states that it should not be construed as an admission of liability or wrongdoing on the part of TPC. Yet, the State is wrongly reporting the determinations subject to this agreement to be “findings” of “violations” of the prevailing wage laws. TPC has been and continues to be penalized for the settled determinations, despite the State’s release and discharge of all penalties arising out of the prevailing wage determinations. Respondents are refusing to enforce the non-admissions clause and have turned a blind eye as Franklin County blatantly ignores the binding legal effects of the non-admissions clause. In doing so, the State is converting the settlement agreement into an admission of guilt or, at the very least, a fiction. Respondents are breaking their own agreements and adjudging TPC as lawbreakers without a hearing.

B. Relators are Entitled to a Writ of Prohibition against Respondents

As to both Assignments of Errors hereinabove, and as prayed in the Complaint, Relators are entitled to a writ of prohibition against Respondents as follows: (1) prohibiting them from considering and reporting unadjudicated and settled determinations as “findings” of “violations” of Ohio’s prevailing wage laws; (2) prohibiting the Department from maintaining and distributing a list of complaints and determinations to others in contravention to the mandates of

R.C. Chapter 4115 unless also reporting that “no violations have been adjudicated”; and (2) ordering them to enforce the settlement agreements with TPC and like contractors.

Relators must satisfy three elements for this Court to issue a writ of prohibition: (1) Respondents are exercising judicial or quasi-judicial authority; (2) Respondents’ use of their judicial or quasi-judicial power is unauthorized by law; and (3) Refusal of the writ will result in injury to Relators for which there is no adequate remedy at law. *State of Ohio ex rel. McKee v. Cooper* (1974), 40 Ohio St.2d 65, 67-68, 320 N.E.2d 286. As to the first element, quasi-judicial authority is the power to hear and determine controversies between the public and individuals that requires a hearing resembling a judicial trial. *State ex rel. Parrott v. Brunner* (2008), 117 Ohio St.3d 175, 177, 882 N.E.2d 908. It is not necessarily a prerequisite to the exercise of quasi-judicial authority for Respondents to have actually held a hearing or is going to hold a hearing; rather, quasi-judicial authority is established where a government entity is required to hold such a hearing. *State ex rel. Baldzicki v. Cuyahoga Cty. Bd. of Elections* (2000), 90 Ohio St. 3d 238, 242, 736 N.E.2d 893. In regards to the third element, an alternative remedy at law is deemed to be adequate only if such remedy is complete, beneficial, and speedy. *State ex rel. Ullmann v. Hayes* (2004), 103 Ohio St.3d 405, 407, 816 N.E.2d 245. Relators bear the burden of proof with regard to each element. *State ex rel. Tilford v. Crush* (1988), 39 Ohio St.3d 174, 176, 529 N.E.2d 1245. Relators satisfy this burden as to both Respondents.

Respondent Zurz has and continues to exercise quasi-judicial authority in this matter. R.C. § 4115.13(C) grants the Department the power to hold hearings and adjudicate alleged prevailing wage violations. In *Harris*, this Court held that the Department is required to hold hearing before its preliminary determination can be considered to be an adjudicated violation of the law having binding effect upon the contractor. 18 Ohio St.3d at 201-02. The due process

protections of the Ohio and U.S. Constitutions also require the Department to hold a hearing. U.S. Const. Am. 14; Ohio Const. Art. I § 16. By reporting mere determinations as “findings” of adjudicated violations of the law, Respondent is assuming the role of both judge and jury, adjudging the guilt of TPC. Bypassing a hearing, Respondent is granting binding legal effect to “invalid” preliminary determinations to the detriment of TPC’s reputation and ability to contract. This is the essence of exercising quasi-judicial authority. Thus, the first element of a writ of prohibition has been satisfied.

Respondent Zurz’s exercise of quasi-judicial authority is also unauthorized by law. This Court’s decision in *Harris*, along with the due process protections of the Ohio and U.S. Constitutions, require the Department to hold a hearing before a contractor can be adjudged to be a lawbreaker. No hearing was provided, however, before the Department reported to the Commissioners that it had found TPC to have violated prevailing wage laws. By failing to provide a hearing the Department exercised its quasi-judicial authority in an unlawful manner.

Further, although R.C. Chapter 4115 requires the Secretary of State to maintain a list of contractors found by the Department, after a hearing and due process, to have intentionally violated prevailing wage law, the General Assembly did not mandate that either the Department or the Secretary of State keep a list of contractors against whom the Department has made a preliminary determination of unintentional prevailing wage violations. R.C. § 4115.113. Pursuant to R.C. § 4115.113, the General Assembly intended and requires the reporting of adjudicated violations in certain specific cases, while not requiring reporting of others. The canon *expressio unius est exclusio alterius* makes clear that by reporting unadjudicated preliminary determinations of prevailing wage violations, the Department is exceeding its statutory authority. *O’Toole v. Denihan* (2008), 118 Ohio St.3d 374, 383-84, 889 N.E.2d 505

(citing *Myers v. Toledo* (2006), 110 Ohio St. 3d 218, 852 N.E.2d 1176) (stating the canon *expressio unius* is “the express inclusion of one thing implies the exclusion of the other.”)

Statute does not give the power to the Secretary of State or the Department keep and disseminate a list of contractors against whom unadjudicated determinations have been issued. Nor does it provide for the State to keep and disseminate a list of contractors deemed to have unintentional violations of the prevailing wage law, such as misinterpretation of the statute or erroneous preparation of payroll documents. *Id.* Nevertheless, the Department is keeping such a list and sharing it with local officials in violation of its statutory power. By exceeding its authority under R.C. Chapter 4115, the Department is using its quasi-judicial power in an unlawful manner.

Likewise, either the Department is reporting findings of violations without seeking the counsel of Respondent Rogers, or Respondent Rogers, in her capacity as Attorney General, has exercised and is exercising quasi-judicial authority in an unlawful manner. In either case, procedural reporting requirements must be established to conform with the law and not violate TPC’s constitutional rights. As the Franklin County Court of Common Pleas found in its decision in Case No. 08-CVH-03-3328, TPC entered into a settlement agreement with the Attorney General. The Attorney General, as chief legal officer of the State, has not enforced the language of the settlement agreement and has allowed the Department to continue to deem and report as “violations” of the law the unadjudicated determinations subject to the settlement agreement. The Attorney General is usurping the power granted to the director in R.C. Chapter 4115 and issuing her own “findings.” In doing so, the Attorney General, as chief counsel to the State, is determining a controversy as to the guilt or liability of TPC without hearing. This is the exercise of quasi-judicial power and it is unauthorized by law. Nowhere does R.C. Chapter 4115

grant the Attorney General the authority to consider determinations settled out of court and without a hearing to be violations of the prevailing wage laws. Had the statute intended the Attorney General to have such power, it would have stated such. Further, the Attorney General's usurpation and exercise of quasi-judicial power violates Relators' rights to due process.

The third and final element necessary for a writ of prohibition is that there is no adequate remedy in the ordinary course of the law. In the case at bar, Relators are left with no adequate remedy other than a writ of prohibition, or the alternative writs sought in Relators' Complaint. As *Harris* established, Relators have no opportunity to appeal preliminary determinations. *Harris*, 108 Ohio St.3d at 201. In addition, because the determinations made by the Department were based on settlement agreements with non-admission clauses, if this writ of prohibition is denied, contractors in this State will be left with no option but to litigate every prevailing wage determination to a verdict, a result not intended by the General Assembly. Currently, contractors who settle these disputes out-of-court to avoid delays, litigation expenses, and collection costs, risk losing government contracts as a result, even if the state agrees to a non-admission clause.

Money damages for the improper denial of a contract are too speculative, and therefore not an adequate remedy. *Leaseway Distributing Centers, Inc. v. Dept of Administrative Services* (10th Dist. 1988), 49 Ohio App.3d 99, 106-07, 550 N.E.2d 955. Furthermore, an injunction is also an inadequate remedy for Relators. Time is of the essence. By the time Relators are able to obtain an injunction on this issue, they will have already been denied additional government contracts. An injunction will not fix the damage to TPC's reputation or help the members of the ABC similarly affected by Respondents' actions. Relators are currently appealing Case No. 08-1478 to this Court, but until that appeal is decided, other government agencies will apply the holdings of the Common Pleas Court and the 10th District Court of Appeals and disqualify

Relators, as well as other contractors, from government contracts using arbitrary rationale. Further, the time it would take to bring a suit to trial and adjudicated through the appellate process is simply too long—Realtors will have been denied a significant number of government contracts, causing considerable pecuniary and reputational harm, in the meantime. For this reason, Relators do not have an adequate remedy in the ordinary course of the law.

C. **Alternatively, Relators are entitled to a Writ of Mandamus against Respondents**

Alternatively, Relators are entitled to a writ of mandamus ordering Respondents to (1) cease and desist from considering and reporting unadjudicated determinations as “findings” of “violations” of the prevailing wage laws; and (2) enforce the terms of the Settlement Agreement by ceasing to report the determinations subject to the agreement as “violations” of the prevailing wage laws. Relators satisfy the elements for a writ of mandamus for both Respondents.

The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St. 3d 118, 118-19, 515 N.E.2d 914; *State ex rel. Voix Builders, Inc. v. Lancaster* (1989), 46 Ohio St.3d 144, 145, 545 N.E.2d 895. Mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 166, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 598, 113 N .E.2d 14. This is not a doubtful case; a writ of mandamus is necessary to stop Respondents’ violations of Relators’ constitutional rights to due process.

Relators have the clear legal right to the relief sought in their mandamus action to ensure they are not deprived of their liberty interest without a hearing, repair damage to TPC’s

professional reputation, and resume the ability to enter into government contracts. They have the legal right to due process under the Ohio and U.S. Constitutions. They have the legal right to enforce settlement agreements with the State and to ensure the agreements are not considered to be evidence of “violations” of the prevailing wage laws when the parties explicitly agreed to the contrary. Relators satisfy the first element of a writ of mandamus.

Respondents also have the clear legal duty to perform the acts requested by Relators. Under R.C Chapter 4115, it is the duty of the State to establish whether a contractor has been “found” to have “violated” the prevailing wage laws; it is not the legal duty of individual counties or localities to decipher whether such a “finding” has been made. It is the legal duty of the Department to make certain the statutory mandates of a hearing or adjudication in a court of law have been fulfilled before reporting a contractor as a lawbreaker. The Fourteenth Amendment of the United States Constitution and Article I, Section 16 of the Ohio Constitution do not allow determinations issued without the opportunity to be heard to form the basis of deprivation. It is therefore the legal duty of the Department and the Attorney General, as chief law officer of the State, to protect its citizen’s constitutional guarantees of due process and make certain State employees, counties and localities do not act in a manner violative of these guarantees. It is the legal duty of Respondents to abide by and enforce their agreements as written, and ensure counties and localities do not consider the determinations subject to settlement agreements containing non-admissions clauses to be “findings” of “violations” of prevailing wage laws. Therefore, the second element of a writ of mandamus has been satisfied.

Finally, there is no ordinary remedy in the ordinary course of the law available for Relators to seek the relief requested, as briefed above in the writ of prohibition section of this

Brief. For these reasons, Relators have met the requisites for a writ of mandamus against Respondents, and an order granting the relief sought is appropriate and necessary.

D. Alternatively, Relators are entitled to an “Other Writ” under R.C. § 2503.40

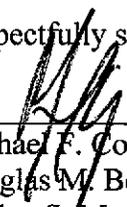
Alternatively, Relator respectfully requests that this Court exercise its discretion conferred upon it by R.C. § 2503.40 and issue an “other writ” ordering Respondents to (1) cease and desist from reporting unadjudicated or settled determinations as findings of violations of the prevailing wage laws when no hearing has been held; (2) cease and desist from maintaining such a list of unadjudicated and settled determinations; and (3) enforce the settlement agreements.

The joint actions of Respondents have resulted in significant and ongoing constitutional violations that damage Relators’ liberty interests, reputation and ability to contract. If there was ever an occasion where action by this Court was necessary to “enforce the administration of justice,” it is this case where the State is engaging in real and damaging constitutional violations.

II. CONCLUSION

For the reasons set forth herein, Relators respectfully request a writ of prohibition, or alternative writ of mandamus, or alternative “other writ” for the relief requested in Relators’ Complaint. The time for action is now.

Respectfully submitted,



Michael F. Copley (#0033796)

Douglas M. Beard (#0073759)

Kenley S. Maddux (#0082786)

The Copley Law Firm, LLC

1015 Cole Road

Galloway, Ohio 43119

Telephone: (614) 853-3790

Facsimile: (614) 467-2000

Attorneys for Relators ABC and The Painting Company