

No.

In The

Supreme Court of the United States

Susan M. Pearsall,  
*Petitioner*

v.

Thomas C. Guernsey, DDS  
*Respondent*

On Petition For Writ Of Certiorari  
To The Third District Court of Appeals Of The State  
Of Ohio

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

- I. Whether it is unconstitutional for the Court to write, rewrite, modify, or add to a so-called settlement agreement without the consent of the parties it binds.
- II. Whether it is unconstitutional for an appellate court, upon review of a trial court's order enforcing a so-called settlement agreement, to not affirm or reverse the so-called settlement agreement as a whole, but to create an alternative version by affirming in part and reversing in part.

## DIRECTLY RELATED PROCEEDINGS

*Pearsall v. Guernsey*, No. 2014 CV 00525,  
Common Pleas Court of Hancock County, Ohio.  
Judgment entered Feb. 25, 2015.

*Pearsall v. Guernsey*, No. 05-15-09, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered Apr. 3, 2015.

*Pearsall v. Guernsey*, No. 2016 CV 00067,  
Common Pleas Court of Hancock County, Ohio.  
Judgment entered Feb. 22, 2019.

*Pearsall v. Guernsey*, No. 05-16-24, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered Oct. 21, 2016.

*Pearsall v. Guernsey*, No. 05-16-25, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered Feb. 27, 2017.

*Pearsall v. Guernsey*, No. 05-17-06, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered Mar. 6, 2017.

*Pearsall v. Guernsey*, No. 05-17-08, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered May. 10, 2017.

*Pearsall v. Guernsey*, No. 05-18-14, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered Jan. 14, 2019.

*Pearsall v. Guernsey*, No. 19-0304, Supreme  
Court of Ohio. Judgment entered Jul. 23, 2019.

*Pearsall v. Guernsey*, No. 05-19-08, Third  
District Court of Appeals, Hancock County, Ohio.  
Judgment entered Oct. 10, 2019.

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW .....	i
DIRECTLY RELATED PROCEEDINGS .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF CITED AUTHORITIES .....	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE .....	3
REASONS FOR GRANTING THE PETITION .....	6
CONCLUSION .....	8
APPENDIX .....	App.1
Appendix A     Judgment Entry of the State of Ohio Court of Appeals for the Third District, Case No. 05-18-14 (January 14, 2019).....	App. 1
Appendix B     Judgment Entry of the State of Ohio Court of appeals for the Third District, Case No. 05-19-08 (September 3, 2019).....	App. 19
Appendix C     Entry of the Supreme Court of Ohio, No. 19-0304 (May 15, 2019)....	App. 27
Appendix D     Entry of the Supreme Court of Ohio, No. 19-0304 (Jul. 23, 2019).....	App. 29

## TABLE OF CITED AUTHORITIES

### CASES

<i>Hainey v. Parrot</i> , 617 F.Supp.2d 668 (§ III.).....	7
<i>In re Teletronics Pacing Systems, Inc.</i> , 137 F.Supp.2d 985 p. 1008, motion denied 148 F.Supp.2d 936 .....	7
<i>Levell v. Monsanto Research Corp.</i> , 191 F.R.D. 543 .....	7, 8
<i>Montgomery v. Liberty Twp. Bd. Of Edn.</i> , 102 Ohio St. 189, 193, 131 N.E. 97 .....	6
<i>Murra v. Farrauto</i> , 10th Dist. No. 16AP-347, 2017-Ohio-842 .....	6
<i>Werner v. Progressive Preferred Ins. Co.</i> , 533 F.Supp.2d 776, affirmed 310 Fed.Appx. 766.....	6

### CONSTITUTION

U.S. Const. Amend. XIII .....	2
U.S. Const. Amend. XIV.....	2

### STATUTES

28 U.S.C. § 1257 .....	1
Ohio S.Ct.Prac.R. 18.02 .....	2, 5
U.S. Supreme Court Rule 13.1 and 13.3 .....	2

## PETITION FOR A WRIT OF CERTIORARI

Petitioner, Susan M. Pearsall, respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the State of Ohio Court of Appeals for the Third District, entered in Case No. 05-18-14 in that court on January 14, 2019.

## OPINIONS BELOW

The State of Ohio Court of Appeals for the Third District, in Case No. 05-18-14 entered a judgment on January 14, 2019. Below, the Common Pleas Court of Hancock County, Ohio entered a decision and order on April 5, 2018, and judgment on May 14, 2018.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Pursuant to Supreme Court Rule 13, this is a petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort. Petitioner, Susan M. Pearsall, seeks review of a judgment of the State of Ohio Court of Appeals for the Third District, after denied discretionary review by The Supreme Court of the State of Ohio in an entry entered on May 15, 2019,

and then denied rehearing upon Pearsall's timely filed motion for reconsideration submitted pursuant to Ohio S.Ct.Prac.R. 18.02, in its reconsideration entry entered on July 23, 2019 in Case No. 19-0304. Pursuant to U.S. Supreme Court Rule 13.1 and 13.3, this petition is filed within 90 days after The Supreme Court of Ohio's reconsideration entry entered on July 23, 2019.

### CONSTITUTIONAL PROVISIONS INVOLVED

The Thirteenth Amendment to the United States Constitution, Section 1 provides:

Neither slavery nor involuntary servitude, except as a punishment for crime where of the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The Fourteenth Amendment to the United States Constitution, Section 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## STATEMENT OF THE CASE

The case is a battery and medical malpractice case filed against dentist, Thomas C. Guernsey, DDS who caused injury to patient Susan M. Pearsall.

The case proceeded to trial by jury on January 29, 2018. On January 30, 2018, after the conclusion of plaintiff's examination of the first witness, Dr. Thomas C. Guernsey, DDS before the jury, a settlement was placed in the record.

At a later date, the defendant then served a motion requesting the court to order the plaintiff to sign an unseen document in a motion titled "MOTION TO ENFORCE SETTLEMENT AGREEMENT" (Feb. 27, 2018). In his motion the defendant requested merely that the court order plaintiff to sign. Of note, the defendant's motion did not yet request the court to give effect to an unsigned, proposed contract by issuing the proposed contract as a court order. Nor did the motion cite any authority to force plaintiff's signature. No oral hearing was expressly requested on behalf of the defendant.

On March 5, 2018, the court filed an order titled "ORDER (Motion to Enforce Settlement Agreement filed by Defendant on February 27, 2018). The order orders "this matter" set for hearing on March 22, 2018 "to consider said motion."

On March 13, 2018, plaintiff served her response in opposition of the defendant's motion to enforce, and on March 15, 2018, plaintiff served a supplement to her response.

On March 22, 2018, (the day of hearing) the defendant served "hand delivered" his reply. A copy had also been faxed to the plaintiff the day before. Of note, it is in the defendant's reply the day before the hearing that the defendant first requests that, as an alternative to obtaining plaintiff's signature, the court instead order the defendant's proposed settlement agreement as a court order, that he first cites any authority, and that he first reveals a copy of the proposed order. This timing did not present a meaningful opportunity for plaintiff to research the law or represent herself. The court then had her begin to go through the defendant's proposed contract, reading while the court asked her questions and answering to the court on the spot presently at the hearing, but then not all the way through the document the court did not want to continue.

On April 5, 2018, the court filed its "DECISION AND ORDER (Motion to Enforce Settlement Agreement filed by Defendant on February 27, 2018)". The decision directs plaintiff to sign the "requested release" within thirty (30) days. Furthermore, it states that in the event that plaintiff fails to sign the release within the thirty (30) days, then "she will be deemed to have forfeited her right to the award" and the court will sign an order "reflecting the agreement and order that this case will be dismissed with prejudice."

On April 30, 2018, plaintiff motioned to have the original case proceed to trial by jury.

The defendant filed his opposition to the case proceeding to trial by jury on May, 1, 2018.

Plaintiff failed to sign as the court directed her to do within thirty (30) days, which ended on May 5, 2018.

Plaintiff filed her response in support of her motion for the original case to proceed to trial by jury on May 8, 2018.

On May 14, 2018 the court entered its judgment.

On June 11, 2018, plaintiff appealed the May 14, 2018 judgment to the Third District Court of Appeals. The appellate court ruled issuing a judgment on January 14, 2019, affirming in part and reversing in part.

On February 22, 2019, the trial court entered on remand an amended order pursuant to the appellate court's judgment.

On February 28, 2019, plaintiff timely filed a notice of appeal in the Supreme Court of Ohio, but was denied discretionary review in an entry entered on May 15, 2019, and then denied rehearing upon plaintiff's timely filed motion for reconsideration submitted pursuant to Ohio S.Ct.Prac.R. 18.02, in its reconsideration entry entered on July 23, 2019 in Case No. 19-0304.

On March 14, 2019, the defendant filed a notice of appeal in the Third District Court of Appeals, Ohio, complaining that the trial court did not order many of the terms from the defendant's proposed order.

On September 3, 2019 the appellate court entered a judgment affirming the judgment that the defendant appealed from, but that resolved the

defendant's assignment of error for him, noting, "2Appellant agreed at oral argument that if the underlying order was still enforceable, the assignment of error was resolved." (Page 4).

## REASONS FOR GRANTING THE PETITION

I. The Ohio trial courts are enforcing contracts which they have written, rewritten, modified, and added to without the consent of both parties bound thereby. The Ohio appellate courts are affirming these decisions. This is a violation of the constitutional protection against involuntary servitude afforded by Section 1 of the Thirteenth Amendment to the United States Constitution. When it involves a so-called settlement agreement, even more precaution is needed to protect rights to remedy. The lower courts believe they can write contracts for parties under authority of decisions such as *Murra v. Farrauto*, 10th Dist. No. 16AP-347, 2017-Ohio-842, *fashioning* those *less essential* terms that were omitted in order to reach a fair and just result. This contradicts cases like *Montgomery v. Liberty Twp. Bd. Of Edn.*, 102 Ohio St. 189, 193, 131 N.E. 497 in which the Ohio Supreme Court asserted that "[t]he law will not insert by construction for the benefit of the parties an exception or condition which the parties either by design or neglect have omitted from their own contract. "; and *Werner v. Progressive Preferred Ins. Co.*, 533 F.Supp.2d 776, affirmed 310 Fed.Appx. 766, that held a court must take great

care that it does not make the contract speak where the parties by neglect or design left it silent.

II. Courts should review settlements and proposed settlements as a whole, reversing and affirming as a whole, or approving and disapproving as a whole. This is a principle in handling settlement agreements that is already recognized in dealing with class actions lawsuits. A court cannot modify the proposed settlement of class action, but must approve or disapprove of the proposed settlement as a whole in relation to all those concerned. *In re Telelectronics Pacing Systems, Inc.*, 137 F.Supp.2d 985 p. 1008, motion denied 148 F.Supp.2d 936. A trial court may only accept or reject a class action settlement as agreed to by the parties; the court has no authority to modify the terms of the agreement. *Hainey v. Parrott*, 617 F.Supp.2d 668 (§ III.). The courts lack authority to modify the terms of the proposed settlement agreement, but rather, only parties have power to change terms of their agreement. *Levell v. Monsanto Research Corp.*, 191 F.R.D. 543. Though the instant case is not a class action, the same principle should be applied to the present case. When a court creates an alternative version of a settlement, by affirming in part and reversing in part, it deprives parties of due process and requires parties to litigate while anticipating alternative versions of a contract, instead of the version before them. The court has the power to do only the following: 1. To approve the agreement as negotiated and agreed to by the parties; 2. To reject

the agreement and, in effect, to send the parties back to the negotiating table, without suggestions or recommendations by the Court; or 3. To reject the agreement, as negotiated and approved, but with suggestions and recommended changes to the parties. *Levell v. Monsanto Research Corp.*, 191 F.R.D. 543.

### CONCLUSION

For the reasons set forth above, a Writ of Certiorari should be granted.

Respectfully submitted,

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October 21, 2019