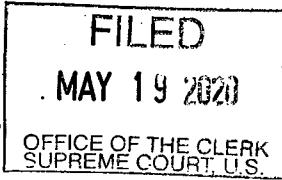


No. 19-8571

ORIGINAL

In the  
Supreme Court of the United States

DERRICK MARTIN KING,  
*Petitioner*



versus

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
*Respondent*

*On Petition for a Writ of Certiorari to the  
Summit County (Ohio) Court of Appeals, Ninth Appellate District*

**PETITION FOR A WRIT OF CERTIORARI**

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*Pro se Petitioner*

## QUESTIONS PRESENTED FOR REVIEW

1. Does the U.S. Constitution recognize a constitutional right of safety as enumerated in several state constitutions?
2. Does the elimination of a state disability financial assistance program solely for budgetary reasons violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment?
3. When a state provides a judicial review procedure following the termination of an individual's state disability financial assistance benefit, does that individual have the constitutional right under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to obtain at no charge the written transcript of the administrative proceedings before the state agency that terminated that individual's benefits?

**LIST OF PARTIES**

Petitioner **DERRICK MARTIN KING** is an adult currently domiciled and residing in Akron, Ohio, United States of America.

Respondent **OHIO DEPARTMENT OF JOBS AND FAMILY SERVICES** (hereinafter "ODJFS") is a state agency as established by Ohio Rev. Code § 121.02(H).

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**PETITION FOR A WRIT OF CERTIORARI**

Petitioner **DERRICK MARTIN KING**, appearing *pro se*, respectfully petitions this Court for a writ of certiorari to review the judgment of Summit County (Ohio) Court of Appeals, Ninth Appellate District.

**OPINION BELOW**

The decision by Ohio's Ninth District Court of Appeals affirming the decision of the trial court is reported as *King v. Ohio Dept. of Job & Fam. Servcs.*, 9th Dist. Summit no. 29198, 2019-Ohio-2989, 2019 WL 330997, 2019 Ohio App. LEXIS 3072 (Ohio App. 9 Dist. Jul. 24, 2019).

**STATEMENT OF JURISDICTION**

On October 15, 2019, the Ohio Supreme Court declined jurisdiction to review the decision of the lower court. *King v. Ohio Dept. of Job & Fam. Servcs.*, 157 Ohio St.3d 1440, 2019-Ohio-4211, 132 N.E.3d 713 (Ohio Oct. 15, 2019).

On December 31, 2019, the Ohio Supreme Court denied reconsideration, thereby making the decision of the Summit County Court of Appeals final. *King v. Ohio Dept. of Job & Fam. Servcs.*, 157 Ohio St.3d 1525, 2019-Ohio-5327, 137 N.E.3d 110 (Ohio Dec. 31, 2019).

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(a) as he timely filed this petition for writ of certiorari within one hundred fifty days of the Ohio Supreme Court's decision denying reconsideration.<sup>1</sup>

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const. amend. I states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. XIV § 1 states:

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.

Ohio Const. art. I § 1 states:

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Ohio Const. art. I § 2 states:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary;

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<sup>1</sup> Pursuant to its authority under Supreme Court Rule 13.1 and 13.3, this Court extended the deadline to file a petition for writ of certiorari due to the COVID-19 public health crisis. See March 19, 2020 Order.

and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

Ohio Rev. Code § 119.12 is reproduced and attached herein as Appendix I at pp. 27-31.

Ohio Rev. Code § 5101.35 is reproduced and attached herein as Appendix I at pp. 31-35.

Former Ohio Rev. Code § 5115.01 (Repealed December 31, 2017) is reproduced and attached herein as Appendix I at p. 35.

Former Ohio Rev. Code § 5115.02 (Repealed December 31, 2017) is reproduced and attached herein as Appendix I at pp. 35-37.

Former Ohio Rev. Code § 5115.04 (Repealed December 31, 2017) is reproduced and attached herein as Appendix I at p. 37.

Former Ohio Rev. Code § 5115.05 (Repealed December 31, 2017) is reproduced and attached herein as Appendix I at p. 38.

Former Ohio Rev. Code § 5115.06 (Repealed December 31, 2017) is reproduced and attached herein as Appendix I at p. 38.

Former Ohio Admin. Code 5101:1-5-01 (Repealed October 1, 2018) is reproduced and attached herein as Appendix J at pp. 39-46.

Former Ohio Admin. Code 5101:1-5-10 (Repealed October 1, 2018) is reproduced and attached herein as Appendix J at pp. 46-47.

Former Ohio Admin. Code 5101:1-5-20 (Repealed October 1, 2018) is reproduced and attached herein as Appendix J at pp. 48-50

### **STATEMENT OF THE CASE**

#### **I. History of Disability Assistance in the United States.**

##### **A. Federal disability financial assistance programs.**

The Social Security Act of 1935 established a system of retirement benefits for older persons and their survivors. Despite discussion about the need for disability insurance, it was not included in the Act. There was active opposition to

any disability insurance program. In 1956, Congress established a trust fund for the collection of taxes in order to provide benefits to disabled workers who met certain requirements., Social Security Amendments of 1958, title II § 205, Pub. L. 85-840, 70 Stat. 819.

In 1972, Congress established the Supplemental Security Income program. SSI was created to replace federal-state adult assistance programs that served the same purpose, but were administered by the state agencies and received criticism for lacking consistent eligibility criteria. The restructuring of these programs was intended to standardize the eligibility requirements and level of benefits. Social Security Amendments of 1972, title III, § 301, Pub. L. 92-603, 86 Stat. 1465.

B. State of Ohio disability financial assistance programs.

The Ohio General Assembly created a new program to cover medical expenses for disabled persons with the enactment of 1991 Am. Sub. H.B. No. 298, 144 Ohio Laws Part III 3987.

II. Operation of the DFA Program.

In Ohio, residents who were “unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months” may be eligible for DFA benefits. Former Ohio Rev. Code 5115.01 (Appendix J, p. 35); Former Ohio Admin. Code 5101.01-5-01 (Appendix K, pp. 39-

45). There was a residency requirement. Former Ohio Admin. Code 5101:1-5-10(A) (Appendix K, p 45).

In order to be eligible for DFA benefits, the applicant must “[h]ave applied for or be in receipt of medicaid; [p]rovide evidence that either a SSA-16-BK ‘*Application for Disability Insurance Benefits*’ ([www.ssa.gov](http://www.ssa.gov) eff. 1/2015) or a SSA-8000 ‘*Application for Supplemental Security Income (SSI)*’ ([www.ssa.gov](http://www.ssa.gov) eff. 1/2012) has been filed and is under review by the social security administration (SSA); and [s]ign the JFS 07319 ‘*Authorization for Reimbursement of Interim Assistance Initial Claim or Post-Eligibility Case*’ (rev. 4/2014).” Former Ohio Admin. Code 5101:1-5-10(E)(1) (Appendix K, p. 45).<sup>2</sup>

### III. Legislative Action to Eliminate Ohio’s DFA Program.

On January 13, 2011, then-Ohio Governor John Kasich signed Executive Order 2011-02K which established the Governor’s Office of Health Transformation (hereinafter “OHT”). The text of Executive Order 2011-02K stated that:

WHEREAS, Ohioans spend more per person on health care than residents in all but 13 states, and rising health care costs are eroding paychecks and profitability; yet higher spending is not resulting in higher quality or better outcomes for Ohio citizens compared to other states.

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<sup>2</sup> At the time of his application for DFA benefits, Petitioner was a unmarried individual with no dependents. Under former Ohio Admin. Code 5101:1-5-01(G)(5) (Appendix K, pp. 45-46), Petitioner’s monthly benefit was set at \$115 per month.

WHEREAS, Medicaid is the largest health payer in Ohio, with 60 million claims paid to 89,000 health care providers who served 2.4 million Ohioans in 2010.

WHEREAS, Medicaid spending is growing at an unsustainable rate four times faster than the Ohio economy over the past four years, and now consumes 30 percent of total state spending and nearly three percent of the Ohio economy.

WHEREAS, Ohio Medicaid policy, spending, and administration is split across multiple state and local government jurisdictions, and this inefficient organizational structure impedes innovation and lacks a clear point of accountability for overall health system performance.

WHEREAS, Ohio has an opportunity to reset the basic rules of health care competition so the incentive is to keep people as healthy as possible, reward Ohioans who take responsibility to stay healthy, rely on evidence about what works so doctors and other health care professionals can deliver the best quality care at the lowest possible cost.

WHEREAS, Ohio has an opportunity to transform primary care from a system that reacts after someone gets sick to a system that keeps people as healthy as possible, prevents chronic disease whenever possible and, when it occurs, coordinates care to improve quality of life and helps reduce chronic care costs, and enables seniors and people with disabilities to live with dignity in the setting they prefer.

WHEREAS, Ohio has an opportunity to innovate constantly to improve health and economic vitality, and demonstrate to the nation why Ohio is a great place to live and work.

NOW THEREFORE, I, John R. Kasich, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution and laws of this State do hereby order and direct that:

1. The Governor's Office of Health Transformation ("OHT") is hereby created in order to carry out the immediate need to address Medicaid spending issues, plan for the long-term efficient administration of the Ohio Medicaid program, and act to improve overall health system performance in Ohio. In the first six months following the

effective date of this Executive Order, the OHT shall do the following:

- a. Advance the Administration's Medicaid modernization and cost-containment priorities in the operating budget;
  - b. Initiate and guide insurance market exchange planning;
  - c. Engage private sector partners to set clear expectations for overall health system performance;
  - d. Recommend a permanent health and human services organizational structure and oversee transition to that permanent structure.
2. I will appoint an Executive Director to lead the OHT. The OHT Director shall oversee and implement the activities described above. In order to carry out these responsibilities, the Director shall have the authority and discretion to employ and fix the compensation of OHT personnel, who shall be in the unclassified civil service. The OHT Director will be the appointing authority for the OHT and will be responsible for making all employment decisions relating to the OHT including, but not limited to, hiring, firing, disciplining, and promoting employees. In addition, the OHT Director shall have the authority and discretion to establish the organizational structure of the OHT.
3. All Cabinet Agencies, Boards and Commissions shall comply with any requests or directives issued by the OHT Executive Director or the OHT Executive Director's designee, subject to the supervision of their respective agency directors. This requirement extends, but is not limited to, the cabinet directors and employees of the following agencies and departments:

- a. Office of Budget and Management;
- b. Ohio Department of Administrative Services;
- c. Ohio Department of Job and Family Services;
- d. Ohio Department of Developmental Disabilities;
- e. Ohio Department of Mental Health;
- f. Ohio Department of Alcohol and Drug Addiction Services;
- g. Ohio Department of Health; and
- h. Ohio Department of Aging.

4. The Ohio Department of Job and Family Services will remain the single state Medicaid agency.
5. As the OHT Executive Director deems necessary, the OHT shall contract with state and/or private agencies for services in order to facilitate the implementation and operation of the OHT's responsibilities, based upon demonstrated experience and expertise in administration, management, data handling, actuarial studies, quality assurance, or other necessary skills.

I signed this Executive Order on January 13, 2011 in Columbus, Ohio and it will not expire unless it is rescinded.

On February 8, 2017, State Representative Ryan Smith (R-Bidwell)

introduced House Bill 49 (hereinafter "H.B. 49"). Section §812.40 of the proposed legislation states:

- (A) The repeal of sections 5115.01, 5115.02, 5115.03, 5115.04, 5115.05, 5115.06, 5115.07, 5115.20, 5115.22, and 5115.23 and the amendment of sections 126.35, 131.23, 323.01, 323.32, 329.03, 329.051, 2151.43, 2151.49, 3111.04, 3113.06, 3113.07,

3119.05, 5101.16, 5101.17, 5101.18, 5101.181, 5101.184, 5101.26, 5101.27, 5101.28, 5101.33, 5101.35, 5101.36, 5117.10, 5123.01, 5168.02, 5168.09, 5168.14, 5168.26, 5502.13, 5709.64, and 5747.122 of the Revised Code take effect on December 31, 2017.

(B) Notwithstanding the provisions of Chapter 5115 of the Revised Code, on and after the effective date of this section and until December 31, 2017, all of the following apply to the Disability Financial Assistance Program:

- (1) Beginning July 1, 2017, the Department of Job and Family Services shall not accept any new application for disability financial assistance.
- (2) Before July 31, 2017, the Department shall notify the following individuals that benefits shall terminate on July 31, 2017:
  - (a) Recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the federal Social Security Administration and who have received a denial of reconsideration from the Administration on or before July 1, 2017;
  - (b) Recipients who do not have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and who have received from the Administration on or before July 1, 2017, an initial denial of benefits or denial of reconsideration.
- (3) Beginning on July 1, 2017, and ending on October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have not received a denial of reconsideration from the Social Security Administration.

- (4) After October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and have not received a denial of reconsideration from the Administration.
- (C) Until July 1, 2019, the Department, or the county department of job and family services at the request of the Department, may take any action described in former section 5115.23 of the Revised Code to recover erroneous payments, including instituting a civil action.
- (D) Beginning December 31, 2017, the Executive Director of the Governor's Office of Health Transformation, in cooperation with the Directors of the Departments of Job and Family Services and Mental Health and Addiction Services, the Medicaid Director, and the Executive Director of the Opportunities for Ohioans with Disabilities Agency, shall ensure the establishment of a program to do both of the following:
  - (1) Refer adult Medicaid recipients who have been assessed to have health conditions to employment readiness or vocational rehabilitation services;
  - (2) Assist adult Medicaid recipients who have been assessed to have disabling health conditions to expedite applications for Supplemental Security Income or Social Security Disability Insurance benefits.

With respect to the proposed elimination of the DFA program, the Legislative Service Commission stated that:

During the next biennium, the DFA program will be phased out. The program was designed to provide benefits to individuals waiting for SSI and Social Security Disability Insurance (SSDI) determination, which could take months to process. The Opportunities for Ohioans with Disabilities Agency has reduced processing times significantly, reducing the demand for this program. DFA payments made during

the determination period are later refunded to the state by the Social Security Administration..

Nicholas J. Blaine & Justin Pinsker (March 2017). *Redbook LSC Analysis of Executive Budget: Department of Job and Family Services*. Retrieved from <https://www.lsc.ohio.gov/documents/budget/132/MainOperating/redbook/JFS.PDF>.

H.B. 49 was referred to the House Finance Committee on February 14, 2017. It should be noted that the Department of Jobs and Family Services notices that there were differences between the proposed language and was introduced in H.B. 49.

On March 9, 2017, then-ODJFS Director Cynthia C. Dungey testified before the Ohio House Finance Subcommittee on Health and Human Services regarding H.B. 49. In a written statement to the committee, Dungey stated that:

We also understand the realities of Ohio's budget situation..It's a reality being faced by states all across our nation. As a whole, we know every state agency is working together to improve efficiencies that allow for lower spending and better service. In our case, other state agencies have greatly enhanced their processing time for applications for the federal SSI/SSDI program, allowing the state to discontinue the Disability Financial Assistance program. This program allows for eligible disabled Ohioans to get the federal support they are requesting far faster than they had previously, all while saving Ohioans' tax dollars.

Testimony of Cynthia C. Dungey before the Ohio House Finance Subcommittee on Health and Human Services (March 9, 2017) Retrieved from [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/132nd ga/ready for publication/committee\\_docs/cmte h hhs sub 1/testimony/cmte h hhs sub 1 2017-03-09-](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/132nd ga/ready for publication/committee_docs/cmte h hhs sub 1/testimony/cmte h hhs sub 1 2017-03-09-)

0900\_157/testimony\_cynthia\_dungey\_director\_department\_of\_job\_and\_family\_servi  
ces-3.09.17.pdf.

On May 2, 2017, a substitute version of H.B. 49 was approved by the House Finance Committee by a 23-9 vote. Later that same day, Sub. H.B. 49 was approved by the Ohio House of Representatives on a 58-37 vote.

On May 3, 2017, Sub. H.B. 49 was introduced in the Ohio Senate. The legislation was immediately referred to the Senate Finance Committee. On May 4, 2017, Director Dungey provided the same testimony to the Ohio Senate Finance Subcommittee on Health and Medicaid as her prior testimony before the Ohio House Finance Subcommittee on Health and Human Services. On May 11, 2017, the committee heard from Kathleen McGarvey, the Director of the Legal Aid Society of Columbus. McGarvey noted that:

In the past five years, LASC and our sister program Southeastern Ohio Legal Services have opened over 115 Disability Financial Assistance cases, around 23 a year. Each of these cases were for individuals who had a pending application for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) but had no income or assets in their household while they waited for Social Security to process their disability applications. Our assistance included everything from advising individuals on the availability of the DFA program and how to apply to representing individuals when their application was improperly delayed or denied.

We have had the pleasure of working with individuals like Nichelle Clark whose case we just closed last month. Nichelle is 45 years old, lives alone and had no household income or assets when she contacted LASC. She had a pending SSDI application, but while she waited, she was struggling without any income in the house. We were able to assist her with getting DFA benefits. This \$115 a month benefit provided her with a lifeline while she waits for her SSDI application to be approved which has been pending for over two years so far.

“John” is another example of an individual for whom DFA was an indispensable benefit. After an accident at work, John began to suffer from uncontrolled seizures. Because of those seizures, he lost his truck driving job and after being unable to find other employment, applied for SSDI and DFA. The small \$115 monthly award that he received from DFA helped sustain him for the three years that it took for him to be awarded SSDI benefits after an Administrative Law Judge hearing.

“Steve” applied for SSDI after working as a medical device operator and managing fast food restaurants for over 15 years. He developed Crohn’s disease and was unable to keep up with the demands at work. While waiting for his SSDI benefits, DFA provided him with a small, but much needed, supplement to meet some of his daily needs. He was approved for SSDI four years after he applied. Just like with “John”, a portion of the back award was used to reimburse Ohio for the DFA benefits it provided to him during his time of need.

It has been stated that DFA is no longer needed to support disabled individuals while they are waiting for SSI or SSDI benefits because SSI/SSDI cases are now being processed more quickly with averages around 67 days from date of application to decision. That statement, however, only reflects determinations at the initial level of processing.

According to the Social Security Disability SSI Resource Center, national approval rates for an initial application is 36%. Sixty-seven days for processing applications is the average timeframe for processing applications at this initial level. And, it is this figure that has been given to suggest that determinations are made quickly and therefore DFA is not needed. However, at this point in the application process, it is not uncommon for Social Security to not have received all the applicable records or to have not conducted needed medical evaluations. As a result, many individuals who are eventually found eligible back to their original date of application are improperly denied.

The next level of application level, reconsideration, has the lowest level of approval nationally at around 13%. According to the National Organization of Social Security Claimants’ Representatives, the reconsideration determination is usually made within 4 months or 120 days.

After a reconsideration decision is made, an applicant can appeal to an Administrative Law Judge (ALJ). This stage has the highest level of approval with national rates around 62% and 45% in Ohio as of March 2017. The ALJ level provides the most complete review of an

individual's case. The agency has had time to collect all the medical evidence, a claimant is able to testify, and hearings often include medical and vocational experts. Data from the Office of Disability Adjudication and Review shows that in Ohio, the average wait time for an ALJ hearing and decision was 535 days as of March 2017. Columbus has a slightly higher average at 625 days.

There are two other levels of appeal – to the Appeals Council and to Federal District Court. But, even without those two other levels of appeal, most individuals in Ohio would wait an average of 67 days at initial application, 120 days at reconsideration and 535 days for an ALJ hearing. This means that most people who are approved for SSI or SSDI benefits wait an average of 1,310 days or over 3.6 years for benefits.

During that time of waiting, those individuals are definitionally unable to perform substantial gainful employment. For the individuals who we see, they have zero income and have exhausted any assets that they had. They are eligible for SNAP or food stamp benefits, but for no more than \$194 a month. Medicaid benefits are available to help with their medical needs. But, they have no cash to pay for housing, for transportation, for personal care items like soap and toothpaste, or for additional food needed beyond what the SNAP benefits will cover. While small, the \$115 per month DFA payment really is a lifeline during those 3.6 years.

The amount of money that DFA costs the State of Ohio is minimal at \$861,000 a month. And, while the program is small, covering only 6,439 people at this point, it provides literally lifesaving assistance to individuals who have been found eligible. For those individuals with income below \$115 a month, zero assets and who have been found disabled for 9 months or more by their physician, DFA is often the one thing that keeps individuals safe, secured and housed while they wait the 3.6 years for an SSI/SSDI decision. As a result, we are asking that the Senate take out the Governor's proposal to eliminate the program.

Testimony of Kathleen McGarvey before the Ohio Senate Finance Subcommittee on Health and Medicaid (May 11, 2017). Retrieved from [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/132nd\\_ga/ready\\_for\\_publication](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/132nd_ga/ready_for_publication)

n/committee docs/cmte s fin health sub 1/testimony/cmte s fin health sub 1.20

17-05-11-1000 445/senatesubcommitteehb49kathleenmcgarvey.pdf.

On June 21, 2017, amendments to Sub. H.B. 49 was approved by the Ohio Senate Finance Committee on a 10-2 vote. On June 21, 2017, Am. Sub. H.B. 49 was approved by the Ohio Senate on a 24-8 vote. On the same day, the Senate amendments to Am. Sub. H.B. 49 was rejected on a 93-1 vote. The Ohio Senate requested that Am. Sub. H.B. 49 be referred to a conference committee. On June 28, 2017, Am. Sub. H.B. 49 (as presented by the conference committee) was approved by the Ohio House by a 59-40 vote and by the Ohio Senate by a 24-8 vote. Governor John Kaisch signed Am. Sub. H.B. 49 on June 29, 2017. It should be noted that Governor Kaisch issued several line-item vetoes (however, the text of Section 812.40 was not vetoed). Am. Sub. H.B. 49 became effective on June 29, 2017 (with certain provisions effective on other dates).

#### IV. Procedural History of Petitioner's Judicial Review Proceeding.

1. *Agency sends notification of proposed termination of benefits.*

On July 10, 2017, ODJFS notified Petitioner that his DFA benefits would terminate on July 30 due to the enactment of 2017 Am. Sub. H.B. 49. On July 13, 2017, Petitioner filed a request for a state hearing.

On July 28, 2017, Petitioner sent notice to ODJFS that he was requesting a copy of the appeal summary and supporting documents. Petitioner also requested a subpoena duces tecum directed to the Ohio Legislative Service Commission for all

documents that ODJFS submitted to the Ohio General Assembly in relation to 2017 Am. Sub. H.B. No. 49. Petitioner was sent a copy of the appeal summary and supporting documents prior to the hearing.

2. *Petitioner's administrative agency appeals.*

On August 8, 2017, Petitioner appeared at the state hearing. Petitioner was told by hearing officer Ann Shane that she did not have any authority to review or hear any arguments regarding the constitutionality of the ODJFS action and that his requested subpoena ducés tecum was being denied. Petitioner nevertheless presented his written arguments that the ODJFS action was unconstitutional.

On August 16, 2017, the ODJFS Bureau of State Hearings affirmed the termination of Petitioner's DFA benefits (Appendix D, pp. 17-19). Petitioner submitted a timely administrative appeal request on August 21, 2017, which was denied on August 30, 2017 (Appendix C, pp. 14-16).

3. *Judicial review proceedings (trial court level).*

On September 8, 2017, Petitioner sought judicial review of the final ODJFS decision. Concurrently with the filing of the notice of appeal, Petitioner filed a request for a copy of the written transcript of the August 8, 2017 state hearing. On September 25, 2017, ODJFS filed a memorandum in opposition to the request for transcript.

On October 12, 2017, a certified copy of the administrative record was filed with the trial court. On October 14, 2017, Petitioner filed a motion to supplement

the record. Petitioner indicated that he wished to submit documents obtained either through a public request from ODJFS or via the discovery process in a separate matter. On October 17, 2017, ODJFS filed a memorandum in opposition to the motion to supplement the record.

On October 19, 2017, the trial court denied the motion for a written transcript of the state hearing. The trial court stated that:

[It] does not find that production of the transcript is essential to the determination of this appeal. Appellant's appeal involves the termination of the Disability Financial Assistance program in Ohio. Appellant contends he was denied a fair hearing before the hearing officer because he was not permitted to present his arguments regarding the constitutionality of the legislation terminating the Disability Financial Assistance program. This is simply not essential to the Court's determination of Appellant's appeal. Appellant's Motion for Production of Transcript is denied.

October 19, 2017 Order (Appendix G, p. 22).

On October 19, 2017, the trial court denied the motion to supplement the record. The trial court stated that "After consideration, the Court concludes the documents [Petitioner] wishes to supplement the record with do not constitute 'newly discovered evidence' under R.C. § 119.12(K)." *Id.*

On October 20, 2017, Petitioner filed a timely appeal of the October 19, 2017 denial of the motion for a written transcript of the state hearing. *King v. Ohio Dept. of Job and Family Svcs.*, 9th Dist. Summit No. 28816 (filed Oct. 20, 2017). The interlocutory appeal was dismissed on December 28, 2017 (Appendix G, pp. 23-25). On January 5, 2018 Petitioner filed an appeal to the Supreme Court of Ohio. On April 25, 2018 the Supreme Court of Ohio declined to hear the appeal. *King v. Ohio*

*Dept. of Job and Family Svcs.*, 152 Ohio St.3d 1448, 2018-Ohio-1600, 96 N.E.3d 301 (Ohio Apr. 25, 2018) (Appendix H, p. 26).

On June 19, 2018, Petitioner filed a petition for writs of procedendo and mandamus with the Supreme Court of Ohio seeking to prohibit the trial court judge from proceeding with the appeal pending the resolution of a declaratory judgment action that was filed prior to the judicial review proceedings. *State ex rel. King v. Wells*, case no. 2018-0865 (filed June 19, 2018). On September 26, 2018, the Supreme Court of Ohio granted Judge Wells' motion to dismiss. *State ex rel. King v. Wells*, 153 Ohio St.3d 1480, 2018-Ohio-3867, 108 N.E.3d 79 (Ohio Sept. 26, 2018).

On August 3, 2018, Petitioner filed his merit brief with the trial court. In his merit brief, Petitioner argued that (1) Ohio Rev. Code § 119.12(K), Ohio Rev. Code § 5101.35(E)(4), and Summit Co. Loc. R. 19.04 are unconstitutional as applied; and (2) the elimination of the DFA program violates his right to equal protection, due process, and the right to safety under the federal and state constitutions. On September 4, 2018, ODJFS filed its merit brief. On September 9, 2018, Petitioner filed a reply brief.

On October 12, 2018, the trial court issued a journal entry which affirmed the ODJFS decision to terminate Petitioner's DFA benefits (Appendix B, pp. 10-13). The trial court began by addressing the additional material attached to Petitioner's briefs and stating that "these materials do not constitute 'newly discovered evidence' under Ohio Rev. Code § 119.12(K)" (Appendix B, pp. 11-12). The trial court also stated that it did not consider the written transcript essential to the

determination of the appeal. *Id.* In addition, the trial court does not find that Ohio Rev. Code § 5101.35(E)(4) or Summit Co. Loc. R. 19.04 are unconstitutional. *Id.*

Turning to Petitioner's equal protection constitutional challenge, the trial court stated that:

[T]here is no basis to impose "strict scrutiny" regarding the enactment of Am. Sub. H. B. No. 49. Under either "rational basis" or "intermediate scrutiny" the elimination of the DFA program was related to the legitimate government interest of repealing a statutory benefit system that the legislature chose to eliminate. Plaintiff-Appellant's argument that his right to equal protection of law under the Fourteenth Amendment was violated is not well-taken and overruled as a result.

Regarding Petitioner's constitutional right of safety, the trial court stated that "Ohio courts have specifically found that there is no fundamental right to receive welfare benefits in Ohio and that the state is not obligated by Section 1, Article I to provide a minimal amount of safety to its citizens" (Appendix B, pp. 12-13) (*citing Daughtery v. Wallace*, 87 Ohio App.3d 228, 239, 621 N.E.2d 1374 (Ohio 2nd Dist. 1993)).

#### 4. *Appellate court review.*

On July 24, 2019, the Ninth District Court of Appeals affirmed the decision of the trial court (Appendix A, pp. 1-9). The court held that Petitioner has not demonstrated that the trial court lacked subject matter jurisdiction. *King v. Ohio Dept. of Job & Fam. Servcs.*, 9th Dist. Summit no. 29198, 2019-Ohio-2989, 2019 Ohio App. LEXIS 3072 (Jul. 24, 2019), ¶¶ 9-12. The court also held that Petitioner failed to bring his as-applied constitutional challenges before the administrative

agency. *King, supra*, ¶¶ 13-16. The court of appeals also held that Petitioner had not demonstrated how the elimination of the DFA violated his constitutional right of safety. *King, supra*, ¶¶ 17-25. Finally, the court of appeals held that Petitioner has developed no argument that the enactment at issue would not pass a rational basis review. *King, supra*, ¶¶ 26-32.

Petitioner filed a timely appeal to the Supreme Court of Ohio, which declined jurisdiction over the discretionary appeal. On October 15, 2019, the Ohio Supreme Court declined jurisdiction to review the decision of the lower court. *King v. Ohio Dept. of Job & Fam. Servcs.*, 157 Ohio St.3d 1440, 2019-Ohio-4211, 132 N.E.3d 713 (Ohio Oct. 15, 2019). On December 31, 2019, the Ohio Supreme Court denied reconsideration, thereby making the decision of Ohio's Ninth District Court of Appeals final. *King v. Ohio Dept. of Job & Fam. Servcs.*, 157 Ohio St.3d 1525, 2019-Ohio-5327, 137 N.E.3d 110 (Ohio Dec. 31, 2019).

#### **REASONS FOR GRANTING THE PETITION**

- I. THIS COURT MUST DETERMINE WHETHER OR NOT THERE IS A FEDERAL CONSTITUTIONAL RIGHT TO SAFETY (AS ENUMERATED IN SEVERAL STATE CONSTITUTIONS) AND WHETHER OR NOT THE TERMINATION OF A DISABILITY BENEFITS PROGRAM VIOLATES THAT FEDERAL CONSTITUTIONAL RIGHT TO SAFETY.

This Court should accept certiorari so that the important issues of whether or not the elimination of a disability benefit program violates the unenumerated federal constitutional right to safety. A definitive determination must be made by

this Court as there are literally millions of Americans that receive government disability benefits that would suffer if those benefits are terminated.

Ohio Const. art. I § 1 states that "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

Petitioner argues that the termination of the DFA program is unconstitutional under the safety clause of the Ohio Constitution. As one legal scholar noted:

A state's traditions can also serve as the basis for independent interpretation of state constitutional provisions.

Because a state constitution represents the most basic values, an interpretation of that document may properly rely on the traditions that shaped those values. These state traditions may differ from the federal tradition and justify departure from the federal constitutional standard. In this regard, Judge Judith Kaye of the New York Court of Appeals quite accurately observed, "where the state's history indicates some special concern, clearly there might well be a different result from analogous federal precedent."

Daan Braveman. *Poverty Law in the 1980's: Children, Poverty, and State Constitutions*. 38 Emory L.J. 577 (Summer 1989)

The Daughtery case is inapplicable to whether or not the Safety Clause of the Ohio Constitution is implicated. First, the DFA program was specifically intended for persons found to be disabled. See former R.C. 5115.02 (eff. Jun. 26, 2003) (statutory eligibility requirements for DFA program); former Ohio Admin. Code 5101:1-5-01, 2016-17 OMR pam. # 3 (A) (eff. Oct. 1, 2016) (DFA definitions and

payment standards); former Ohio Admin. Code 5101:1-5-10, 2016-17 OMR pam. # 3 (A) (eff. Oct. 1, 2016) (nonfinancial eligibility requirements); and former Ohio Admin. Code 5101:1-5-20, 2016-17 OMR pam. # 3 (eff. Oct. 1, 2016) (determination of a disability). It should be noted that the eligibility requirements under Ohio's DFA program are consistent with those of the federal programs for Disability Insurance Benefits and Supplemental Security Income. See 42 U.S.C. § 423(d) (DIB eligibility requirements) and 42 U.S.C. § 1381a (SSI eligibility requirements).

It should be noted that in the United States, there are nearly two dozen state constitutions that recognize that someone or something in the individual states will provide for those in need. Although the DFA program specifically provided for assistance for persons that were considered to be "disabled" under Ohio law, the state constitutions provide guidance on the recognized right of safety in the United States. Some of the state constitutional provisions include the following:

- Ala. Const. art. IV § 88 ("It shall be the duty of the legislature to require the several counties of this state to make adequate provision for the maintenance of the poor");
- Alaska Const. art. VII § 5 Public Welfare ("The legislature shall provide for public welfare");
- Ariz. Const. art. XXII, § 15 ("Reformatory and penal institutions, and institutions for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law")
- Ark. Const. art. 19 § 19 ("It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb and the blind, and also for the treatment of the insane")

- Cal. Const. art. XVI § 3(2) (“The Legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans...”)
- Cal. Const. art. XVI § 3(3) (“The Legislature shall have the power to grant aid to needy blind persons not inmates...”)
- Cal. Const. art. XVI § 3(4) (“The Legislature shall have power to grant aid to needy physically handicapped persons not inmates...”);
- Colo. Const. art. VIII § 1 (“Educational, reformatory and penal institutions, and those for the benefit of insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law”);
- Haw. Const. art. IX § 3 (“The State shall have the power to provide financial assistance, medical assistance and social services for person who are found to be in need of and are eligible for such assistance and services as provided by law”);
- Ind. Const. art. IX § 1 (“It shall be the duty of the General Assembly to provide, by law, for the support of institutions for the education of the deaf, the mute, and the blind; and, for the treatment of the insane”);
- Kan. Const. art. VII § 4 (“The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the aid of society. The state may participate financially in such aid and supervise and control the administration thereof”);
- Ky. Const. § 244A (“The General Assembly shall prescribe such laws as may be necessary for the granting and paying of old persons an annuity or pension”);
- La. Const. art. XII § 8 (“The legislature may establish a system of economic and social welfare, unemployment compensation, and public health”);
- Ma. Const. art. XVIII § 3 (“Nothing herein contained shall be construed to prevent the commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the

ordinary and reasonable compensation for care or support actually rendered or furnished...”);

- Mich. Const. art. 4 § 51 (“The public health and general welfare of the people of the state are hereby declared to be matters of primary concern. The legislature shall pass suitable laws for the protection and promotion of the public health”);
- Mont. Const. art. 12 § 3(1) (“The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans”);
- Mont. Const. art. 12 § 3 (2) Persons committed to such institutions shall retain all rights except those necessarily suspended as a condition of commitment...”);
- Mont. Const. art. 12 § 3 (3) (“The legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune are determined by the legislature to be in need”);
- Mont. Const. art. 12 § 3 (4) (“The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services”);
- N.M. Const. art. IX § 14 (“Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad; provided: A. nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons”);
- N.C. Const. art. XI § 4 (“Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore, the General Assembly shall provide for and define the duties of a board of public welfare”);
- Okla. Const. art. XVII § 3 (“The several counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by

reasons of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county”);

- Okla. Const. art. XXI § 1 (“Educational, reformatory, and penal institutions and those for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State in such manner as may be prescribed by law”);
- Pa. Const. art. III § 29 (“No appropriations shall be made for charitable, educational or benevolent purposes to any person of community nor to any denominational and sectarian institution, corporation or association: Provided, That appropriations may be made for pensions or gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support...”);
- Tex. Const. art. III § 51-a (“The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations, restrictions and regulations as may be by the Legislature be deemed expedient, for assistance grants to needy dependent children and the caretakers of such children, needy persons who are totally and permanently disable because of a mental or physical handicap, needy aged persons and needy blind persons. The Legislature may provide by General Laws for medical care, rehabilitation and other similar services for needy persons. The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate...”);
- Wash. Const. art. XIII § 1 (“Educational, reformatory, and penal institutions; those for the benefit of youth who are blind or deaf or otherwise disabled; for persons who are mentally ill or developmentally disabled; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law”); and
- Wyo. Const. art 7 § 18 (“Such charitable, reformatory and penal institutions as the claims of humanity and the public good may require, shall be established and supported by the state in in such manner as the legislature may prescribe. They shall be supervised as prescribed by law”).

Ohio's constitutional right of safety is clearly consistent with the rights enumerated by other state constitutions. In addition, Ohio's constitutional right of safety is consistent with prior versions of the Ohio Constitution. For example, the Ohio Constitution of 1802 made explicit that even a pauper's children could attend the public schools. Ohio Const. of 1802, art. VIII §§ 15, 25. In addition, the state amended its constitution in 1990 to authorize the legislature to provide subsidized housing for low-income individuals. Ohio Const. art. VIII § 16 being of the people of the state, it is determined to be in the public interest and a proper public purpose for the state . . . to provide . . . housing . . . . ("To enhance the availability of adequate housing in the state and to improve the economic and general well-being of the people of the state, it is determined to be in the public interest and a proper public purpose for the state . . . to provide . . . housing . . . .").

Accordingly, this Court must grant the petition for writ of certiorari.

II. THIS COURT MUST DEFINITIVELY DECIDE WHETHER OR NOT THE ELIMINATION OF A STATE GOVERNMENT DISABILITY BENEFITS PROGRAM SOLELY FOR BUDGETARY REASONS VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT.

There seems to be a split among the states as to whether the elimination of a state public assistance benefit program violates the Equal Protection Clause. This Court must determine whether or not a state disability benefit program can be terminated solely due to budgetary reasons. Petitioner argues that the State of

Ohio's legislative action in eliminating the DFA program is unconstitutional in violation of the Equal Protection Clause.

Recently, the state legislatures have attempted to terminate public assistance benefit programs for non-citizens who are in the United States legally. The Connecticut legislature chose to terminate a separate health care program that provided medical coverage to lawfully residing immigrants. In *Hong Pham v. Starkowski*, 300 Conn. 412, 16 A.3d 635 (Conn. 2011), the Connecticut Supreme Court found that the decision to eliminate this program did not constitute discrimination on the basis of alienage. However, in *Finch v. Commonwealth Health Insurance Connector Authority*, 461 Mass. 232, 959 N.E.2d 970 (Mass. 2012), the Supreme Court of Massachusetts found that the state legislature's attempt to bar legal immigrants from a state-funded health care plan violated the equal protections granted by Massachusetts State Constitution.

III. THIS COURT MUST DETERMINE WHETHER OR NOT THE DUE PROCESS CLAUSE PROTECTIONS REQUIRE A STATE AGENCY TO PROVIDE AN APPELLANT WITH A WRITTEN COPY OF THE TRANSCRIPT OF PROCEEDINGS OF AN ADMINISTRATIVE AGENCY WHEN REQUESTED BY THE APPELLANT.

There can be no doubt that under this Court's precedents that Petitioner was entitled to a written transcript of proceedings of the state administrative hearing during the judicial review process if he requests such a transcript.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging

the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." (Emphasis Added). U.S. Const. amend. I. The State of Ohio has a similar provision written into the state constitution. Ohio Const. art. I § 16 states that "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Though it uses slightly different language, the "due course of law" provision of the Ohio Constitution provides the same guarantee as the Due Process Clause of the Fourteenth Amendment. *In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, 47 N.E.3d 803, *reconsideration denied*, 145 Ohio St.3d 1411, 2016-Ohio-899, 46 N.E.3d 704 (Ohio 2016).

” This Court has repeatedly recognized the right of an individual to access the courts to redress grievances.

In 1972, this Court proclaimed in *California Motor Transport v. Trucking Unlimited*, 404 U.S. 508, 612, 92 S. Ct. 609, 30 L. Ed.2d 642 (1972) that "[t]he right of access to the courts is indeed but one aspect of the right of petition." In addition, this Court held that the fundamental constitutional right of access to the courts requires that prisoners have a meaningful opportunity to present claims to the courts. *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed.2d 72 (1977). "3.

This Court has recognized an appellant's constitutional right to obtain a copy of the transcript of proceedings during the course of appellate proceedings.

This Court repeatedly held that when a state grants people convicted a direct appeal as of right, equal protection and due process of law require that a state furnish appellate courts with trial transcripts in cases involving indigent defendants when transcripts are needed for a full and effective defense on appeal.

*Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956); *State ex rel. Seigler v. Rone*, 42 Ohio St.2d 361, 361–362, 328 N.E.2d 811 (1975).

In the case of *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed.2d 287 (1970), this Court held that “[w]elfare benefits are a matter of statutory entitlement for persons qualified to receive them and procedural due process is applicable to their termination” and that “The interest of the eligible recipient in the uninterrupted receipt of public assistance, which provides him with essential food, clothing, housing, and medical care, coupled with the State's interests that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens.”

The right to judicial review of administrative agency decisions was granted by the Ohio General Assembly. See Ohio Rev. Code § 119.12 and Ohio Rev. Code § 5101.35. Thus, it stands to reason that an appellant who files for judicial review of the final decision of a state agency decision is entitled to as a matter of law a copy of the written transcript of the state hearing.

## CONCLUSION

This case involves the rights of litigants with respect to judicial review proceedings of state administrative agency decisions. If state administrative agencies are allowed to ignore constitutional rights

Based on all of the foregoing, Petitioner respectfully submits that a grant of certiorari is appropriate in this important matter.

Respectfully Submitted,

  
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