"IN CONCLUSION,…" ARE WE MISSING AN OPPORTUNITY TO PERSUADE?

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INTRODUCTION

In the world of legal brief writing, conclusions are everywhere. The United States Supreme Court's rules require that a brief contain a conclusion,[1] as do the federal appellate rules,[2] and those of many state courts.[3] Even in states where conclusions are not required,[4] experts advise including a conclusion anyway.[5] And while

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1. SUP. CT. R. 24(1)(j).

2. FED. R. APP. P. 28(a)(9). By local rules, some federal courts at the trial level also require that a brief contain a conclusion. *E.g.*, D. DEL. LR 7.1.3(c)(1)(G); D. ARIZ. LRCIV 16.1(a)(5). This piece will focus on conclusions in appellate briefs but will also refer to trial-level briefs.

3. *E.g.*, OHIO R. APP. P. 16(a), 16(b); PA. CT. COM. PL. INDIANA CNTY. LOC. R. 210(B); PA. CT. COM. PL. MCKEAN CNTY. LOC. R. 210(a)(5), (d).

4. For example, appellate courts in ten states do not specially require a separate conclusion section: California, Delaware, Georgia, Kansas, Maine, Nebraska, New Jersey, New York, Oklahoma, and Oregon.

5. *E.g.,* Charles A. Bird & Webster Burke Kinnaird, *Objective Analysis of Advocacy Preferences & Prevalent Mythologies in One California Appellate Court*, 4 J. APP. PRAC. & PROCESS 141, 146 (2002) ("Notably, the rules do not require an issue statement, a summary of argument, or a conclusion. By custom, California appellate briefs begin with an introduction and end with a conclusion surrounding the four mandatory sections."); KANSAS JUDICIAL COUNCIL, KANSAS APPELLATE PRACTICE HANDBOOK 211–30 (6th ed. 2022), https://kansasjudicialcouncil.org/publications/kansas-appellate-practice-handbook; *see also* Jennifer M. Warren, *Building a Better Brief: Using Each Section of Your Appellate Brief to Make Your Case*, 90 OKLA. BAR J. 36, 38 (Oct. 2019) ("Every appellate brief should include a pithy and powerful conclusion.").

judges,[6] lawyers,[7] and law professors[8] have offered passing observations about the conclusion section, the sources fail to explore at length and with precision the full range of possibilities for an effective conclusion.

The purpose of this piece is to change that by providing a fulsome discussion of the conclusion section and to go further than prior works have done by providing a more complete taxonomy of possibilities for conclusions. No other taxonomy of conclusions exists in the literature. The taxonomy provides a useful provisional framework for further work on the structure of conclusion sections. This taxonomy is helpful, even if imperfect, because it helps provide writers a way to first recognize and later, employ options for conclusions. Different cases may require different approaches, and a list allows advocates to choose conclusions that are most compelling for a particular case or audience. For busy advocates, a list of possible conclusions can expedite the drafting process. It provides a starting point and streamlines the decision-making process when crafting the conclusion, saving valuable time and resources.

But for starters and to first lay a foundation, Part I of the piece begins by examining what experts have written about the purpose of the conclusion section,[9] and generally, what makes an effective one.

Second, the piece moves beyond generalities and in Part II examines representative conclusions. I analyzed these conclusions to shed additional light on the

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6. *E.g.,* ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 37–38, 100–01 (2008).

7. *E.g.,* ROSS GUBERMAN, POINT MADE: HOW TO WRITE LIKE THE NATION'S TOP ADVOCATES 301–12 (2d ed. 2014).

8. *E.g.*, TERESA REID RAMBO & LEANNE PFLAUM, LEGAL WRITING BY DESIGN 346 (2d ed. 2013).

9. Experts advise that a brief will be more effective if the writer carefully considers the purpose of each of the brief's sections and ensures that purpose is accomplished. *See, e.g.,* Daniel L. Real, *Appellate Practice in Nebraska: A Thorough, Though Not Exhaustive, Primer in How to Do it and How to Be More Effective*, 39 CREIGHTON L. REV. 29, 87 (2005) (noting that an "appellate litigant should carefully consider the purpose of each section of the brief and then make sure that purpose is accomplished. For example, the tables, the facts, the argument, and the conclusion sections of the brief serve very important purposes.").

conclusion component of the legal brief, and more specifically, to identify a taxonomy of techniques brief writers employ when crafting their own conclusions.

Third and finally, Part III suggests two specific areas where more research is needed. Armed with a provisional range of possibilities for the conclusion section of the brief, more work is needed to understand (1) the advocacy preferences and reading habits of judges and their staffs; and (2) the best practices for teaching law students to draft conclusions their audiences will find persuasive.

I. EXPERTS' VIEWS ABOUT THE PURPOSE OF THE CONCLUSION SECTION AND WHAT MAKES AN EFFECTIVE CONCLUSION

Experts identify two purposes for the conclusion section: a "functional" purpose and a "persuasive" purpose.[10] Experts universally agree that the conclusion section of the brief should serve the functional purpose—i.e., to inform the court of the request for relief. But there is disagreement as to whether it should strive to satisfy the persuasive purpose—i.e., to take advantage of a last opportunity to capture the court's attention and convince it to rule for the writer's side. Some experts, who this piece refers to as proponents of the "persuasive" approach, suggest that the conclusion should do more than request relief. Others, who this piece refers to as proponents of the "formulaic" approach, contend that a conclusion should be limited to a plain statement of the relief requested.

This piece will discuss each purpose, in order, and then flesh out the disagreement surrounding the persuasive purpose. Along the way, the piece notes experts' views about what makes a conclusion effective and why.

10. SCALIA & GARNER, *supra* note 6, at 100.

A. The Functional Purpose Served by the Conclusion Section

With regard to the functional purpose, experts agree that brief writers should aid the judges and court staff who are tasked with crafting an opinion and judgment by providing an explicit request for relief.[11] From the court's perspective, the conclusion must clearly specify the precise relief sought.[12] Indeed, the court may look to the conclusion to ensure that the prevailing party receives the relief it requests.[13] The court may even use the prevailing party's conclusion as a template for drafting the judgment so the conclusion should use the precise terminology that the prevailing party would want reflected in the judgment itself.[14]

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11. LAUREL CURRIE OATES ET AL., JUST BRIEFS 231 (4th ed. 2021); *see also* TESSA L. DYSART, LESLIE H. SOUTHWICK & RUGGERO J. ALDISERT, WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT (3d ed. 2017) ("If you are seeking a remand with a direction to enter judgment notwithstanding the verdict, say so. Otherwise, the court may conclude that you are requesting a new trial. If you are requesting a remand with a direction to dismiss the complaint or to enter judgment in favor of your client, say so. Be very specific."); David Lewis, *If You Have Seen One Circuit, Have You Seen Them All? A Comparison of the Advocacy Preferences of Three Federal Circuit Courts of Appeal*, 83 DENV. L. REV. 893, 900 (2006) (surveying federal judges in three circuit courts to determine their advocacy preferences and finding, among other things, that judges in all three circuits agreed that a conclusion should state precisely the outcome the party seeks); Bird & Kinnaird, *supra* note 5, at 142, 151 (surveying nine judges and 29 staff attorneys in California's Fourth Appellate District to determine advocacy preferences and finding, among other things, that "[r]esponders passionately want counsel to write a conclusion that states exactly the relief they seek"); Joseph C. Merling, *Advocacy at Its Best: The Views of Appellate Staff Attorneys*, 8 J. APP. PRAC. & PROCESS 301, 304 (2006) (surveying staff attorneys from across the nation who represented federal and state appellate and supreme courts and finding, among other things, a preference for conclusions that precisely state the remedy sought).

12. Travis Wimberly, *A Prayer and A Hope: Effective Prayers to Get the Relief You Really Want*, KUHN HOBBS LLC (June 2014), https://kuhnhobbs.com/wp-content/uploads/2018/07/12_Hobbs_Wimberly_AP14_pap.pdf.

13. *Id.*

14. *Id.*; JOAN ROCKLIN ET AL., AN ADVOCATE PERSUADES 95 (2d ed. 2022). As Brian Wolfman notes in his 2021 essay "How to Conclude a Brief,"

> [s]ometimes more complex conclusions are needed to serve your clients . . . . [For example,] more complexity and nuance tend to be called for when (1) the relief sought or opposed varies across claims; (2) there's more than one party on one or both sides of the "v"; (3) relief is sought

The conclusion can also help the court understand an otherwise ambiguous brief.[15] For example, in the appellate context, "When a party's issues presented and argument do not make clear exactly what is being appealed, many courts will 'look[] to [the] party's prayer for relief to determine what standard of review to apply.'"[16] And, if the relief requested is atypical, the conclusion can provide the court with explanation for why the court can and should act differently in this case than in others.[17]

But even when the request is "obvious,"[18] the conclusion must include a description of the requested relief. The court should not have to guess what relief the parties desire. If required to do so, it may overlook nuances of the appeal, as when a party requests not only that the court order a new trial, but also that it provide specific directions for the conduct of the trial. In some cases, the appellant may request special relief short of full reversal of the trial court decision. [19] In these situations, the writer should aid the court by providing an explicit request.[20]

> or opposed in the alternative; (4) threshold rulings will (or will not) make other relief necessary or sensible; (5) the standard of review is not the same across all issues; and (6) the issues decided below were not all decided at the same stage of the litigation (motion to dismiss, summary judgment, trial verdict, post-trial, etc.).

Brian Wolfman, *How to Conclude a Brief*, 20 J. ASS'N LEGAL WRITING DIRS. 117, 120 (2023).

15. Wimberly, *supra* note 12.

16. Wimberly, *supra* note 12 (quoting Benavente v. Granger, 312 S.W.3d 745, 747 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (collecting cases)).

17. Kansas Judicial Council, *supra* note 5, at 20.

18. MICHAEL FONTHAM & MICHAEL VITIELLO, PERSUASIVE WRITTEN AND ORAL ADVOCACY: IN TRIAL AND APPELLATE COURTS 334 (3d ed. 2018) (observing that in the appellate context, request for relief is often "obvious"); *see also* Wolfman, *supra* note 14, at 119–20 (providing examples of "no-muss, no fuss" conclusions).

19. FONTHAM & VITIELLO, *supra* note 18, at 337.

20. Some authors have indicated that the request for relief can also benefit the client. *E.g.*, Wimberly, *supra* note 12. Wimberly explains, by specifying the relief sought, the conclusion

> can serve as a roadmap for the attorney to manage client expectations. Early analysis of the relief sought—and the likelihood of receiving that relief—can help guide settlement decisions and appellate strategy. For particularly "hands-on" clients, the lawyer may even want to circulate a draft of the prayer early in the brief-writing process, which may help

Finally, when it comes to crafting that explicit request for relief, experts counsel that the conclusion should avoid phrases like "For the foregoing reasons," and "For the reasons stated."[21] Experts have labeled these phrases "trite," "lifeless," and "mindless," and suggested that they "gum up the flow of prose."[22]

B. The Persuasive Purpose Served by the Conclusion Section

Turning to the persuasive purpose, some experts suggest that the conclusion should do more than serve the functional purpose. The conclusion should also aid in the persuasive process.[23] For these experts, the conclusion aids in the persuasive process when the writer uses it to "deliver a final punch." [24] As Scalia and Garner write, the conclusion "should be, so to speak, the distance runner's devastating kick at the end of the race."[25]

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foster this dialogue. The client's general counsel may also find the prayer useful when debriefing executives or other non-lawyers at the company about the status and possible outcomes of the appeal.

Id.

21. BRYAN GARNER, THE WINNING BRIEF 347 (1st ed. 1999) (quoting STEWART LACASCE & TERRY BALANGER, THE ART OF PERSUASION: HOW TO WRITE EFFECTIVELY ABOUT ALMOST ANYTHING 30 (1972) (referring to these phrases as "deadly" and "mechanical")); MARY BETH BEAZLEY & MONTE SMITH, LEGAL WRITING FOR LEGAL READERS 352 (2014) (suggesting that counsel substitute your best reason(s) for the opening clause); Brian Williams, *Finish With a Punch: Tips for Writing Effective Conclusions*, A.B.A. (Oct. 31, 2018), https://www.americanbar.org/groups/litigation/resources/newsletters/trial-evidence/finish-punch-tips-writing-effective-conclusions/ (advising counsel avoid phrases like "in conclusion," "to summarize," or "for the foregoing reasons" in conclusions).

22. Savannah Blackwell, *Conclude Forcefully*, BAR ASS'N OF S.F. (Dec. 20, 2020), https://www.sfbar.org/blog/conclude-forcefully/. Blackwell posits that writers "dash off" concluding lines like "for the foregoing reasons, the Court should [grant or deny the motion]" because they have "run out of time, space, and energy." *Id.*

23. *E.g.*, Williams, *supra* note 21.

24. MARY RAY & JILL RAMSFIELD, LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN 129 (6th ed. 2018); Williams, *supra* note 21 (opining that a good conclusion "should amount to a written mic drop").

25. SCALIA & GARNER, *supra* note 6, at 101.

But what techniques should brief writers employ to "deliver a final punch" or make a "devastating kick at the end of the race?"[26] Experts have offered a handful of general suggestions for persuasive conclusions.[27] For example, the conclusion might "sum up your argument"[28] or end with a "provocative quotation or pithy thought."[29] The conclusion might also include an "explicit tie-in between the introduction and the conclusion."[30] The conclusion might describe why the rule counsel established with earlier arguments must be vindicated,[31] and similarly, the writer might return in the conclusion to "the theme that has been developed throughout the plot and make it explicit."[32]

Experts suggest that the conclusion should not be overly long.[33] Indeed, court rules may specify that the

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26. *See* ROBERT E. BACHARACH, LEGAL WRITING: A JUDGE'S PERSPECTIVE ON THE SCIENCE AND RHETORIC OF THE WRITTEN WORD 107 (2020) ("Don't just wrap up with a single sentence; crystalize what you have developed by ending strongly . . . .").

27. *See, e.g.*, GUBERMAN, *supra* note 7, at 237 (sharing two techniques for generating conclusions as well as examples employing those techniques).

28. ROSS GUBERMAN, POINT MADE: HOW TO WRITE LIKE THE NATION'S TOP ADVOCATES 242 (1st ed. 2011) (referring to the summary method as "the wrap up" and providing examples of briefs that employ the method). Garner, who also advocates for the summary method, reasons that "count[ing]" and "list[ing]" the reasons makes the writer's argument "look substantial." GARNER, *supra* note 21, at 348; *see also* RICHARD K. NEUMANN, JR ET. AL., LEGAL WRITING 225 (5th ed. 2023) (endorsing the summary approach); BACHARACH, *supra* note 26, at 107 (urging the writer to "ensure clarity by adding a conclusion" that "concisely remind[s] the reader of the core points from your argument").

29. GUBERMAN, *supra* note 7, at 303 (referring to this method as "parting thought" and including examples employing the method); *see also, e.g.,* GARNER, *supra* note 21, at 348, 352 (endorsing this method and showcasing an example conclusion that incorporates a quotation from Justice Jackson and calling it "effective" because the quotation "appeals to the best judicial instincts"; it good humoredly points out that there's no shame in recanting); Williams, *supra* note 21 (endorsing this method).

30. GARNER, *supra* note 21, at 348; *see also* RAY & RAMSFIELD, *supra* note 24, at 287 (counseling that generally the introduction and conclusion elements of the brief should be "congruent").

31. Blackwell, *supra* note 22.

32. Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 J. LEGAL WRITING INST. 127, 150 (2008).

33. *E.g.*, Bird & Kinnaird, *supra* note 5, at 151 (noting that survey responders "indicated a weak preference for a conclusion that summed up the merits" and advising, based on responders' narrative comments, "any argument in the

conclusion must be "short."[34] And even in the absence of an applicable rule, experts have suggested a variety of maximum lengths for the conclusion section, ranging from a sentence or two[35] to one paragraph[36] or two paragraphs[37] to no more than one page.[38] Unnecessary length in the conclusion might "dilute its impact"[39] and/or try the courts' patience.[40]

Finally, experts advise that a conclusion should not contain any new arguments.[41] And, although the conclusion may be "in effect a summary," some experts suggest that it should not simply rehash previous points.[42] "Instead, [it should] capture in a few sentences the theme of the brief. The conclusion should be broad enough to encompass the overall message. It may reflect equitable considerations to provide a dramatic, but not overstated, touch to the ending."[43] "In a brief, the conclusion brings the reasoning to a head and often ties that legal reasoning to the desired remedy."[44]

C. Support For and Against the Persuasive Purpose

As stated above, although experts universally agree that the conclusion section of the brief should serve the functional purpose, there is disagreement among experts as to whether it should also strive to satisfy the persuasive purpose. This section of the paper will set forth

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conclusion should be very short"). *But see* Lewis, *supra* note 11, at 901 (reporting that judges in the Tenth Circuit "slightly agreed" that a conclusion should sum up the merits, judges in the First Circuit "had no preference," and judges in the Second Circuit "slightly disagreed" that a conclusion should sum up the merits).

34. FED. R. APP. P. 28(a)(9).

35. RYDER ET AL., ADVOCACY ON APPEAL 69 (4th ed. 2021).

36. *E.g.,* NEUMANN, JR ET. AL., *supra* note 28, at 225.

37. SCALIA & GARNER, *supra* note 6, at 100.

38. RAMBO & PFLAUM, *supra* note 8, at 346; *cf.* GARNER, *supra* note 21, at 349–50 (featuring a sample conclusion that is eight paragraphs in length).

39. FONTHAM & VITIELLO, *supra* note 18, at 337.

40. BEAZLEY & SMITH, *supra* note 21, at 352.

41. Real, *supra* note 9, at 88.

42. FONTHAM & VITIELLO, supra note 18, at 336.

43. *Id.*

44. *See* RAY & RAMSFIELD, *supra* note 24, at 130.

arguments that have been made in favor of and against the persuasive purpose.

1. Support for the Persuasive Purpose

Proponents of the persuasive approach contend that "[t]oo much legal writing ends not with a bang but with a whimper."[45] They offer several justifications in support of writing persuasive conclusions.

First, they argue that because the conclusion section comprises an entire section of the brief, it should serve a larger role than simply to say, "the end,"[46] as a more formulaic conclusion might do. And relatedly, experts remind that the conclusion doesn't just occupy any section of the brief but the section of the brief that occupies the "second most important position of emphasis."[47] As Bryan Garner explains, "[l]ike your opening words, your closing words are critical. They're your leaving-taking. And you should no more use a formulaic closer than you should send off a trusted ally on an important mission with a perfunctory 'See ya.'"[48] Instead, the writer should take advantage of the position of emphasis and "close on a note of strength."[49]

One theory, recency theory, helps explain why, at least for proponents of the persuasive approach, the conclusion is so important. The "recency effect" states that people will remember, and be influenced by, the last information to which they are exposed.[50] And, because the

45. Williams, *supra* note 21. Proponents of the persuasive conclusion have suggested that inclusion of "less ambitious" formulaic conclusions is the result of some or all of the following: convention, lack of creativity, the writer's fatigue, and/or space constraints. *See, e.g.*, *id.*

46. FONTHAM & VITIELLO, *supra* note 18, at 336; *see also* Warren, *supra* note 5 (discussing the conclusion section stating, "every section of an appellate brief is an opportunity to educate and persuade the court regarding your case. Take no section for granted and use every opportunity to make your case.").

47. *See* RAY & RAMSFIELD, *supra* note 24, at 129.

48. GARNER, *supra* note 21, at 348.

49. FONTHAM & VITIELLO, *supra* note 18, at 56.

50. Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305, 346 (2010).

conclusion paragraphs are the very last things anyone reads in the text, readers will remember them better than any other paragraphs in the document, courtesy of the recency effect on memorability.[51]

A persuasive conclusion may not just help the writer; it may also aid the reader. From the reader's perspective, the conclusion serves as a fulfillment of expectations (readers expect a conclusion that brings all elements of a story to an end). In the conclusion, "[t]he writer returns to the theme that has been developed throughout the plot and makes it explicit. All of the conflicts are resolved, and the court is led to a calm, rational, and just conclusion." That calm, rational, and just conclusion being, the "client wins, either by being restored to status quo *ante* or by being placed in a new, satisfying condition, consistent with the theme of the narrative."[52] And Judge Bacharach explains that the writer "ensure[s] clarity" for the reader "by adding a conclusion" that "concisely remind[s] the reader of the core points your argument."[53]

Readers tell us that they don't only encounter conclusions at the conclusion of their brief reading. In fact, some judges[54] report reading the conclusion *first* to help get a sense for each side's argument.[55] To be helpful to

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51. *See* GUBERMAN, *supra* note 7, at 301 (quoting JAMES B. STEWART, FOLLOW THE STORY 272 (1998) ("[T]he ending is the most important part of a story. If the lead provides the first impression necessary to propel readers through a story, the ending provides the last. What is freshest in readers' minds is what they read most recently, which is the ending.")); Blackwell, *supra* note 22 ("Many jurists say that the way you finish your brief is second in importance only to the way you start it. So, don't give this critical part short shrift.").

52. Chestek, *supra* note 32, at 150.

53. BACHARACH, *supra* note 26, at 107.

54. Jamison Gilmore, *Barristers Tips*, L.A. LAW., Apr. 2021, at 12 ("Motions and related responsive pleadings should be drafted with the judge in mind because he or she is the intended audience.").

55. Eric J. Magnuson & Lisa Lodin Peralta, *Appellate Drafting—How to Write a More Helpful Submission to the Court: Ten Tips from Inside the Court*s, ROBINS KAPLAN LLP (Jul. 14, 2015), https://www.robinskaplan.com/-/media/pdfs/appellate-drafting—-how-to-write-a-more-helpful-submission.pdf. Former Chief Justice of the Minnesota Supreme Court Eric Magnuson writes: "The conclusion is not an afterthought—or at least, it shouldn't be. It is the last thing written and often little time is spent on it. However, many appellate judges read the

these judges, the conclusion must go further than a request for relief and properly frame how the judge should view the issues. [56]

A more substantive conclusion is also helpful to a judge who wishes to quickly refresh their memory about a case. "Particularly in courts with busier dockets—where months at a time may pass without activity on a case while the court works on other matters—it is crucial that the brief provide this necessary refresher through a clear and concise prayer."[57] For this reason, some experts advise that advocates should write the conclusion as if the judge will read only that section.

2. Criticism of the Persuasive Purpose

There are critics of the persuasive approach. Those critics[58] contend that a conclusion should be limited to a plain statement of the relief requested. [59] For example, a

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conclusion first to help get a sense for each side's arguments." *Id.* (emphasis added). Similarly, in an earlier edition of his book, *Winning on Appeal: Better Briefs and Oral Argument*, Senior Judge Ruggero J. Aldisert of the Third Circuit Court of Appeals wrote "[j]udges crave an immediate sense of overview . . . . [Y]our brief must be an effective teaching tool if it is to be a good or an excellent advocacy piece. Substantive introductions and conclusions will make briefs better teaching tools and, therefore, better advocacy pieces." RUGGERO J. ALDISERT, WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT (2d ed. 2003). *Cf.* FREDERICK BERNAYS WIENER, EFFECTIVE APPELLATE ADVOCACY, 31–162 (Rev. Ed. 2004) (noting that "Bert Combs, who served on the Court of Appeals when it was Kentucky's highest appellate court, and later sat on the Sixth Circuit, said he always turned to the Conclusion first because many appellate advocates conclude their brief with a peroration which succinctly summarizes the argument," but then noting "[t]hat practice may be outdated by the ubiquitous personal computer and the advent of the summary of argument").

56. Magnuson & Peralta, *supra* note 55; Gilmore, *supra* note 53; Wimberly, *supra* note 12 ("[a]long with the summary of the argument, the prayer provides the most succinct and easily accessible overview of a party's case. From reading those two sections, a judge should be able to easily discern both the party's substantive argument and the procedural disposition the party seeks.").

57. Wimberly, *supra* note 12.

58. GUBERMAN, *supra* note 7, at 238 (writing that the classic approach "is to make your 'conclusion' section a formulaic sentence or two . . . you would then put your 'real' conclusion at the end of your argument section").

59. *E.g.*, Wolfman, *supra* note 14, at 119–26. A third group of experts generally disfavor the persuasive approach but recognizes its utility in limited cases. *E.g.*, RYDER ET AL., *supra* note 35, at 70 (recognizing the possible utility of the

formulaic conclusion might read: "The district court's judgment should be affirmed."

Proponents of the formulaic approach reason that the conclusion's role is functional rather than persuasive; all the reader is looking for in the conclusion section is the relief sought.[60] The writer need not go further. And in fact, the writer who goes further risks trying the reader's patience.[61]

Proponents of the formulaic approach also advocate that it is important to state precisely the relief your client desires and warn that "if you lard up the conclusion with another summary of your arguments or an extended rhetorical flourish about the justice of your client's position, the request for relief could get lost in the sauce. That's taking quite a risk."[62]

Relatedly, some brief writers (including the Solicitor General of the United States) read court rules as permitting nothing more in the conclusion than the request for relief.[63]

Still other supporters of the formulaic approach believe that readers will not dwell on any conclusion. If the

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persuasive approach in a "particularly complex matter or a case that implicates personal rights or liberty interests"); JOHN DERNBACH ET AL., PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD 353 (7th ed. 2021) (advocating for a "brief summary of the arguments" supporting your conclusion only "[i]n trial court briefs with complex arguments").

60. SUSAN E. PROVENZANO AT AL., ADVANCED APPELLATE ADVOCACY 305 (2016).

61. BEAZLEY & SMITH, *supra* note 21, at 352; *see also* Wolfman, *supra* note 14, at 118 (stating that "the convention—particularly among first-rate brief writers—is to keep conclusions quite short" and warning that "keeping conclusions short will meet the judges' expectations and not seem out of place or inconsistent with high-quality brief writing").

62. Wolfman, *supra* note 14, at 121. *But see* Williams, *supra* note 21 ("The desired relief can be ribboned into arguments so as not to invade the final, and perhaps best, space to crystalize why the relief is merited. If the arguments are lucid, the requested relief should follow obviously and naturally.").

63. SCALIA & GARNER, *supra* note 6, at 100; R.A. ROBBINS ET. AL., YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING 275 (2d ed. 2019) ("The Conclusion is a short statement stating the precise relief sought. It is not a summary of the argument (you provided that earlier).")

writer wants to persuade the reader, the writer is better off doing so earlier in the document.[64]

The conclusions discussed in the next part, Part II, reflect how a representative group of lawyers approached the conclusion element, and specifically, how a representative group of lawyers came out on the formulaic-persuasive continuum of conclusions, and which techniques writers of persuasive conclusions employed.

II. A TAXONOMY OF TECHNIQUES FOR CONCLUSIONS AND REPRESENTATIVE CONCLUSIONS FROM SELECTED BRIEFS

To examine lawyers' practices in writing conclusions, I chose to study merit briefs filed in cases being orally argued to the Supreme Court of Ohio[65] during 2022, a total of 155 briefs. A complete list of these 155 briefs I studied is appended as Appendix A.[66] Many of these briefs were written by seasoned[67] appellate advocates or by Ohio's Office of the Solicitor General, which

64. MICHAEL D. MURRAY & CHRISTY H. DESANCTIS, ADVANCED LEGAL WRITING AND ORAL ADVOCACY: TRIALS, APPEALS, AND MOOT COURT 236 (2d ed. 2013).

65. The Supreme Court of Ohio is the state court of last resort and is made up of seven elected justices, one of whom is the chief justice.

66. The briefs are accessible electronically via the Supreme Court of Ohio's online docket. This database includes cases filed in the Court on or after January 1, 1985, and practice of law cases filed in the Court on or after January 1, 1989. The briefs can be found either by entering a complete case number or party name. *Search for Supreme Court of Ohio Cases*, SUP, CT. OF OHIO (last visited Jan. 14, 2025).

67. For example, some of the attorneys who argue before the Supreme Court of Ohio are certified appellate law specialists. The Ohio State Bar Association sets the standards for certification. OHIO STATE BAR ASSOCIATION, APPELLATE LAW ATTORNEY INFORMATION AND STANDARDS 4–6 (2018), https://www.ohiobar.org/globalassets/home/cle—certification/certification/appellate-law-standards.pdf ("An applicant for certification as a specialist in the field of Appellate Law must be an attorney licensed to practice law in the State of Ohio and in good standing and, in addition, must meet the following mandatory requirements as of the date of the filing of the application:" substantial involvement in appellate law practice, seven separate individual references, and passing of a written examination, among other things.).

is known for its outstanding advocacy.[68] The conclusions closed out arguments on cases involving, among other things, "substantial constitutional question[s]," "question[s] of great general or public interest," and felonies.[69] I analyze characteristics of these conclusions in order to shed some light on the conclusion component of a brief.

For starters, each of these 155 Supreme Court of Ohio merit briefs I reviewed did include a separate conclusion. And this is the case even though the Supreme Court of Ohio's Rules of Practice do not require a separate conclusion in merit briefs;[70] by custom those briefs end with a conclusion.[71]

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68. Ohio's Office of the Solicitor General has been the recipient of numerous "best brief" awards given by the National Association of Attorneys General (NAAG) and the Ohio State Bar Association litigation section. *See, e.g.*, National Association of Attorneys General, *National Association of Attorneys General Announces Winners for 2023 Supreme Court Best Brief Awards* (Oct. 11, 2023), https://www.naag.org/press-releases/national-association-of-attorneys-general-announces-winners-for-2023-supreme-court-best-brief-awards/ (""These awards recognize the excellence of state attorneys who collectively handle more Supreme Court cases than anyone else in the legal community,' said Dan Schweitzer, chief counsel of the NAAG Center for Supreme Court Advocacy. 'Attorney general offices play an active role in the nation's highest court, and we congratulate these individuals for their expertise and focus on this important work.'"); Ohio State Bar Association, *OSBA Litigation Section Best Brief Award* (2020), https://www.ohiobar.org/about-us/awards-scholarships/litigation-section-best-brief-award/; Ohio Attorney General, *Office of the Solicitor General*, https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Appeals (showing three current attorneys in the office having received past best brief awards: Stephen Carney, 5-time winner of NAAG best brief award, Zachery Keller, 3-time winner of Ohio AG-wide excellence in writing award (2015, 2016, 2018), winner of OSBA litigation section best public brief award (2017), and Samuel Peterson, NAAG best brief award, OSBA litigation section best brief award).

69. S.CT.PRAC.R. 7.08(B)(4).

70. *See* S.CT.PRAC.R. 16.02(B) (rule governing the contents of appellant's merit brief), 16.03(B) (rule governing the contents of appellee's merit brief). Rule 16.02(B) requires an appellant's brief to include a table of contents, a table of authorities, a statement of facts, an argument headed by a proposition of law, and an appendix. And the appellee's merit brief must "comply with the provisions in S.CT.PRAC.R. 16.02(B), answer the appellant's contentions, and make any other appropriate contentions as reasons for affirmance of the order or judgment from which the appeal is taken." S.CT.PRAC.R. 16.03(B). That said, the appellee may omit a statement of facts "if the appellee agrees with the statement of facts given in the appellant's merit brief" and "[t]he appendix need not duplicate any materials provided in the appendix of the appellant's brief." *Id.*

71. *See* Supreme Court of Ohio, *Rules of Practice* (Jan. 1, 2023), https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/practice/rulesof

I computed the number of briefs that employed a formulaic conclusion and the number of briefs that employed a persuasive conclusion. For this exercise, I define "formulaic conclusion" as a conclusion limited to a plain statement of the relief requested.[72] I define "persuasive conclusion" as a conclusion that went beyond a statement of the relief requested.

Then, I examined the language of the persuasive conclusions to classify which persuasive technique or techniques the conclusions employed.[73] Based on my examination and my review of the literature, I created a taxonomy of techniques for persuasive conclusions. As noted above, no other taxonomy of techniques for conclusions exists in the literature.

The taxonomy consists of five possibilities for persuasive conclusions I find most applicable to briefs:

1. Summarize the main reasons why the court should do what the writer urges.

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practice.pdf. Appendix H following the Rules of Practice includes a sample "Merit Brief of Appellant." *Id.* at 140. That sample brief includes a separate conclusion even though a conclusion is not a required element of the brief. *Id.* at 152. In the preface to the Rules, the Court notes, "The samples are included to illustrate to attorneys and litigants *the proper form* to be used for documents filed in the Supreme Court." *Id.* at v (emphasis added).

Interestingly, the conclusion in the Court's sample brief is a persuasive as opposed to a formulaic conclusion:

> The decision below is fundamentally wrong in its reasoning and dangerous in its implications for public employee collective bargaining. The decision undermines the structure and purpose of the Public Employees' Collective Bargaining Act. In place of that coherent Act, the decision below would establish a disorderly and outmoded method of governmental labor relations, a method this court condemned in *Kettering*. Such a process, under which municipal agencies would be free to disregard the municipality's collective bargaining agreement, and exercise unilateral control over topics that are subject to mandatory bargaining, must be rejected.
>
> The decision below must be reversed. A reversal will promote the exemplary purposes of the Act . . . .

Id. at 152.

72. *See, e.g.,* Merit Brief of Appellee, McClain v. State, 2021-0718.

73. A given persuasive conclusion may incorporate more than one persuasive technique. *See, e.g.*, RYDER ET AL., *supra* note 35, at 69–70.

2. Make a call for action or change.
3. Become more general by putting the case in a broader context.
4. Become more specific by ending with an apt quote or pithy thought.
5. Strike the theme and give the audience a reason to care.

As noted above, this taxonomy is helpful, even if imperfect, because it helps provide writers a way to first recognize and later, employ options for conclusions. Different cases may require different approaches, and having a list allows writers to choose conclusions that are most compelling for a particular case or audience. For busy writers, having a list of possible conclusions can expedite the drafting process. The list provides a starting point and streamlines the decision-making process when crafting the conclusion, saving valuable time and resources.

In the discussion that follows, subsection (A) describes each of the five possibilities in this taxonomy and offers an example of the same, and subsection (B) discusses my findings regarding the conclusions in the Supreme Court of Ohio sample I examined.

A. A Taxonomy of Possibilities for Persuasive Conclusions

Possibility #1: Summarize the main reasons why the court should do what the writer urges.

This type of conclusion ends with a concise reminder—a summary—of the argument's core points. Take the following example which distills down and simplifies complex argument from a thirty-plus page brief filed in an intellectual property matter:

> Plaintiffs have not sustained any of their claims. The Lexicon does not infringe Plaintiffs' copyright and in any event represents a fair use of Ms. Rowling's novels. The current cover presents no possibility of consumer confusion, and infringes no

> trademark belonging to either Plaintiff. Plaintiffs' motion for a preliminary injunction should be denied.[74]

In just four sentences, the writer provides the reader with a succinct and easily accessible overview of the case. By reading just that handful of sentences (whether the judge chooses to do so first to get a sense of the argument or later to refresh her recollection), a judge should be able to easily discern both the writer's substantive argument (i.e., no infringement, fair use, no possibility of consumer confusion, and infringes no trademark) and the procedural disposition the writer seeks (i.e., denial of the plaintiffs' motion for a preliminary injunction).

Also notable is what this sample summary conclusion does not include. It does not include lifeless phrases like "in summary," "in conclusion," or "to sum up." Readers know that they are at the end of the brief and do not need a signpost. Similarly, it does not include "trite" phrases like "for the foregoing reasons," which "gum up the flow of prose."[75]

And this summary conclusion also avoids introducing brand new arguments.[76] Introducing new arguments could confuse readers and sap force from the arguments.

A summary conclusion may be formatted in the same way as the brief's introduction. Consider the next example in a bankruptcy appeal in which the writer's conclusion calls back to a bulleted summary of main points from the brief's introduction:

> **Introduction**
>
> Appellants Earl and Carolyn Robb urge the Panel to deny the motion to dismiss and to allow this appeal to be decided on the merits. It is not moot. The

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74. GUBERMAN, *supra* note 7, at 307 (featuring a conclusion written by Larry Lessig in *Warner Bros. Entertainment Inc. v. RDR Books*).

75. Blackwell, *supra* note 22. *Contra* Merit Brief of Appellee, State v. Drain, 168 Ohio St. 3d 1520 (2020-0652) (including the phrase "For all of the reasons set forth in the foregoing law and argument" at the beginning of the formulaic conclusion).

76. EDWIN SCOTT FRUEHWALD, LEGAL WRITING EXERCISES: A PRACTICAL GUIDE TO CLEAR AND PERSUASIVE WRITING FOR LAWYERS 129 (2014).

motion to dismiss presents the Court with three straightforward issues:

- **Bona Fide Purchaser**. Under section 363(m), if an authorization for the sale of property in a bankrupt estate is modified on appeal, the validity of a sale to a bona fide purchaser is not affected. USLIFE purchased the property knowing of the Robbs' leases; if USLIFE had instead foreclosed, its interest would have been subordinated to the leases. Given USLIFE's knowledge, can it meet the standard of a bona fide purchaser who wipes out the Robbs' leases?
- **Modification of Sale**. Even assuming the sale had been valid, section 363(m)—the "mootness rule"—states only that if an authorization for the sale of property in a bankrupt estate is reversed or modified on appeal, then the validity of a sale to a bona fide purchaser is not affected. Given that the Robbs seek merely to modify a sale to account for their leases, not to invalidate a sale, can section 363(m) render their appeal moot?
- **Opportunity to Object**. The mootness rule presumes that interested parties have had the opportunity to seek a stay. Here, the Robbs had no knowledge of the authorization for sale until three days after the sale took place, and they then acted promptly to seek a stay. Given that they had no opportunity to object—beyond that which they are now exercising—does the mootness rule apply to their appeal?

Section 363(m) of the Bankruptcy Code provides that the reversal or modification on appeal of an authorization of sale . . . .

Conclusion

The three questions presented by the motion to dismiss should be answered in a straightforward fashion:

- No, USLIFE is not a bona fide purchaser: Thus, the mootness rule does not apply to this appeal of an order authorizing a sale.

- The mootness rule applies to place only the validity of a sale beyond review. Here, one relief sought is modification. Therefore, no, the rule does not bar this appeal.
- The presumption of the mootness rule that the aggrieved party had a fair opportunity to seek a stay is not valid in this case. The Robbs did not have that chance. As a result, no, the mootness rule cannot fairly apply to their appeal.

The Robbs ask the Panel to deny the motion to dismiss.[77]

The conclusion summarizes the main reasons why the court should deny the motion to dismiss. It mirrors the structure of the introduction by succinctly answering the three key issues and reiterating the answers in a clear, logical sequence.

Ultimately, both the introduction and conclusion sections are tightly aligned not only in structure, but also in tone, and purpose. As noted above, in terms of structure, both the introduction and the conclusion use a parallel three-question framework,[78] addressing the issues of bona fide purchaser status, modification of sale, and opportunity to object. This symmetry reinforces the coherence of the argument and ensures the reader clearly sees the logical progression from the introduction to the conclusion. In terms of tone, the introduction sets out the issues in a straightforward manner, and the conclusion resolves them with equally straightforward answers. This consistency in tone lends credibility and clarity to the argument. And in terms of purpose, the introduction explains why the appeal is not moot and lays the foundation for the legal arguments, while the conclusion reaffirms these points and asks the court for the specific relief sought: denial of the motion to dismiss. The

77. GARNER, *supra* note 21, at 351 (featuring an introduction and a conclusion written by attorney Dennis J.C. Owens).

78. The writer's use of bullet points for the list adds visual interest and draws the eye immediately to the salient points and thereby enhances readability. *See, e.g.*, GUBERMAN, *supra* note 7, at 295.

introduction and conclusion elements of this brief are therefore congruent.[79]

Possibility #2: Make a call for action or change.

A brief might also attempt to persuade by ending with a call for action or change. The brief would do so, for example, by predicting the future if something mentioned happens or does not happen. The writer would predict that any disposition other than the one the writer advocates for would result in uncertainty or confusion among the lower courts or members of the bar or otherwise cause harm to the client and/or to others. In this way, the writer plays to the reader's pragmatic concerns. As Judge Richard Posner has stated, both trial judges and appellate judges are essentially "pragmatists" who care about the institutional and real-world effects their decisions may have.[80] "Judges are curious about [social reality] . . . [t]hey want the lawyers to help them dig below the semantic surface."[81] A persuasive conclusion that makes a call for action or change, does just that.

In just three sentences, the following call-for-action conclusion warns of a harm (e.g., weakening of the federal regulatory scheme) that will persist unless the court orders the procedural disposition the writer seeks (i.e., unless the court issues a writ):

> This Court should grant a writ to reverse summarily the decision of the court of appeals and require that the FERC be instructed to act within 60 days on the complaint of the Louisiana Commission. The FERC's inaction undermines the federal regulatory scheme, conflicts with statutory directives, and causes irreparable harm. The importance of the

79. RAY & RAMSFIELD, *supra* note 24, at 287 (counseling that generally the introduction and conclusion elements of the brief should be "congruent").

80. RICHARD POSNER, HOW JUDGES THINK 238–39 (2010).

81. *Id.* at 228; Andrew L. Frey & Roy T. Engelhart, Jr., *How to Write a Good Appellate Brief*, 20 LITIG. 6 (1994).

> federal issues and breadth of harm caused by the delay warrant the issuance of a writ.[82]

The writers of this call-for-action conclusion suggest that defeat for their client would be bad for others as well and thereby attempt to trigger the "judicial fear" of causing harm.

Possibility #3: Become more general.

Another technique the writer might employ in a persuasive conclusion section is to "become more general," for example, by putting the writer's case in a broader context. The become-more-general conclusion would recontextualize the case or explain what the argument reveals about society or trends.

In the following example, the writer uses the "become more general" technique in the first paragraph of the persuasive conclusion to add texture to the overall argument and broaden the dispute:

> Divorces are never pleasant. They are less so when another person is involved, and even less pleasant when one spouse has transferred money to that other person. But there is a reason that the law imposes a burden on the complaining spouse to prove actual knowledge on the third person's part of a spouse's intent to defraud, and that reason is that any punitive or equitable measures should be taken first against the spouse who has purportedly done something wrong.
>
> Here, the Glassmans' community estate was more than sufficient to have allowed the trial court simply to make a disproportionate award to Ms. Glassman, or to have ordered Mr. Glassman to pay her the $61,753.
>
> Here, the evidence showed that Mr. Glassman was transferring money to Ms. Oliver to cover his living expenses, and during the period in question there were indeed withdrawals from the account totaling

82. MICHAEL FONTHAM & MICHAEL VITIELLO, PERSUASIVE WRITTEN AND ORAL ADVOCACY: IN TRIAL AND APPELLATE COURTS 448 (2d ed. 2007).

> well over $61,753—none of which went to Mr. Glassman.
>
> And here, the record is devoid of any evidence showing that Patti Oliver was a schemer, with Mr. Glassman, in a plot to cheat Ms. Glassman out of anything.
>
> In short, there is no evidence to support the court's fact findings that were used to divest Ms. Oliver of almost as much money as she herself had when Mr. Glassman began making deposits in her account; accordingly, the trial court's adverse judgment should be reversed and rendered.
>
> In the alternative, the evidence was factually insufficient to support those findings, and Ms. Glassman's claims against Ms. Oliver should be remanded for a new trial.[83]

With a short and direct first sentence, the author grabs the reader's attention by acknowledging the bigger picture—i.e., the distressing nature of divorce. With a second longer but no less clear sentence, the author acknowledges that divorces like the one presently before the court present an even more distressing situation. And yet, despite the distress the adversary is quite understandably experiencing, the writer argues, the law as she has explained it reaches the "right" and "just" result.

Possibility #4: Become more specific by ending with an apt quotation or a pithy thought.

Another technique the writer might employ in a persuasive conclusion section is to become more specific by ending with an apt quotation or pithy thought. What makes a parting thought "pithy?" A parting thought in a brief conclusion is "pithy" because it incorporates a well-known idiomatic proverb or figure of speech—e.g., my opponent isn't entitled to what he seeks because he's trying

83. GARNER, *supra* note 21, at 349.

to "have his cake and eat it too."[84] Or a parting thought in a brief conclusion may be pithy because it incorporates a well-known legal principle—e.g., my opponent isn't entitled to the relief sought because the opponent's argument, "boiled down to its essence, is that the [trial court] got it right, and the [intermediate appellate court] got it wrong. This [the Supreme Court] is not an error-reviewing Court."[85]

Similarly, what makes a quotation appropriate for use in a persuasive brief conclusion? A quotation might be appropriate for use in a brief conclusion because it comes from an authoritative source. For example, the writer could use a quote from a former Justice of the United States Supreme Court,[86] or from an earlier

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84. GUBERMAN, *supra* note 7, at 305 (featuring Morgan Chu's brief in *MedImmune v. Greentech* where Chu argues that his opponent is trying to "have his cake and eat it too").

85. Merit Brief of Appellee at 50, Goudy v. Tuscarawas Cnty. Pub. Def., 171 Ohio St. 3d 173 (2021-0831).

86. GARNER, *supra* note 21, at 352. Garner features his own "closer in a successful motion for rehearing" in which he quotes from a Justice Robert H. Jackson opinion. That conclusion is as follows:

> We are asking this Court to change its mind. We think this to be not only possible, but necessary. And there is a long tradition of great judges who thought better on second thought, as Justice Jackson once observed when doing an about-face:
>
> > Precedent . . . is not lacking for ways by which a judge may recede from a prior opinion that has proven untenable and perhaps misled others. See Chief Justice Taney, *License Cases*, 5 How. 504, recanting views he had pressed upon the Court as Attorney General of Maryland in Brown v. Maryland, 12 Wheat. 419. Baron Bramwell extricated himself from a somewhat similar embarrassment by saying, "the matter does not appear to me now as it appears to have appeared to me then." . . . If there are other ways of gracefully and good-naturedly surrendering former views to a better considered position, I invoke them all. [Footnoted citation to McGrath v. Kristensen, 340 U.S. 162, 177–78 (1950) (Jackson, J., concurring).]
>
> Reynolds prays for even one such invocation.
>
> In particular, Reynolds asks the Court to grant this motion for rehearing and provide the following relief (in the alternative):
>
> - affirm the trial court's judgment against Fuller Indemnity; or
> - reverse the judgment and render judgment for a lesser amount; or
> - reverse the judgment and remand the case to the trial court.

Id.

decision of the very court the current matter is pending before,[87] and state that the same results or reasoning applies to the writer's case.

In the following become-more-specific conclusion, the writer used a "juicy quotation"[88] from the language of the court below:

> The trial judge correctly observed: "There's absolutely no evidence at all that any discrimination was taking place." Doiwchi herself conceded that even she does not believe she was let go because she has a learning disability. The record is devoid of substantial evidence of intentional discrimination. So, too, is it devoid of the requisite proof that those accused of failing to accommodate knew that Doiwchi had a covered disability and a disability-caused-work-limitation that required accommodation. Doiwchi never told them.
>
> Princess respectfully requests that this Court reverse the judgment entered by the trial court and grant Princess JNOV or, in the alternative, grant a new trial or remittitur of damages. In addition, Princess requests that this Court deny Doiwchi's request for additional attorneys' fees.[89]

What makes the trial judge's statement—"There's absolutely no evidence at all that any discrimination was taking place"—appropriate for use in the conclusion? The statement is appropriate for use because it combines authority (from the judge), categorical certainty (no evidence, period), and rhetorical leverage (defense counsel isn't just arguing that there's no evidence of discrimination—the trial court is saying it) in a way that not only

87. *E.g.*, Merit Brief of Appellant at 24, Elliot v. Durrani, 171 Ohio St. 3d 213 (2021-1352) (persuasively concluding a brief to the Supreme Court of Ohio by quoting a prior decision of the Supreme Court of Ohio and arguing that a rule from that prior decision applies to the writer's case).

88. GUBERMAN, *supra* note 7, at 310.

89. GUBERMAN, *supra* note 7, at 310 (featuring Nancy Abell's brief in *Doiwchi v. Princess Cruise Lines*); Reply and Opposition Brief for Appellant/Cross-Respondent at 48, Doiwchi v. Princess Cruises, Inc., (2000) (No. BC 1611733) 2000 WL 35602552.

reinforces the brief's argument but also leaves a lasting impression on the reader.

Possibility #5: Strike the theme and give the audience a reason to care.

Finally, a persuasive conclusion might end by capturing the theme of the brief. In the following thematic example, the author returns to a theme, highlighted throughout the brief, about a government actor's (in this case, the California Attorney General's) well-meaning intentions gone awry:

> The California Attorney General has identified an admittedly important global environmental issue—climate change associated with, among other things, greenhouse gases (mainly carbon dioxide). And he has selected a single one of the innumerable sources of such gases—internal combustion engines in motor vehicles—on which to focus his attention in seeking a partial solution to what he perceives to be the problem of global warming. And, after having been rejected in his efforts to commandeer the federal judiciary to address the climate change conundrum by targeting utilities companies, he has brought this suit seeking essentially the same judicial intervention against automobile manufacturers.
>
> But this is the wrong place, and the wrong process, for achieving the Attorney General's objectives. The issue he wishes to address is so vast and so complex that it must be redressed by governments acting through treaties, legislation, and political compromise. It simply cannot be done in the federal courts. This is a classic example of how taking a political issue and turning it into a tort lawsuit can only further complicate and disrupt the ongoing political process. Article III precludes federal courts from deciding nonjusticiable issues.
>
> Moreover, there is simply no such thing as a nuisance suit against manufacturers of lawful, indeed useful and absolutely invaluable, products. The manufacturer of a motor vehicle is no more guilty of creating a nuisance than the builder of a highway,

> such as the State of California, which, when used for its lawful and highly utilitarian purpose, results in the production of carbon dioxide. California, in particular, fosters a culture and identity that affirmatively encourages the use of the very product that it now seeks to brand as a nuisance. This makes no legal or logical sense.
>
> Finally, of course, the political branches are assigned constitutional responsibility for dealing with national and global policy issues like global warming. And those branches have the institutional power to prevent state actors from interfering with national programs and objectives. That is precisely the case with automotive emissions and fuel economy. California is prohibited by federal law from interfering in this fashion.
>
> Whatever its motivation, this suit is misconceived and pernicious and must be brought a prompt and final termination.[90]

The writer begins by recognizing the importance of addressing global climate change, emphasizing the Attorney General's desire to tackle a significant issue: "The California Attorney General has identified an admittedly important global environmental issue." This framing shows respect for the Attorney General's motivations, which enhances credibility and acknowledges the stakes of the case.

The conclusion pivots to argue that the Attorney General's attempt to resolve this issue through litigation is fundamentally flawed: "But this is the wrong place, and the wrong process, for achieving the Attorney General's objectives." This argument encapsulates the theme of a well-meaning initiative derailed by improper execution, highlighting how the lawsuit disrupts constitutional processes and established legal frameworks. The writer critiques the unintended consequences of the lawsuit, such as complicating the political process: "Turning it into a tort lawsuit can only further complicate and

90. GUBERMAN, *supra* note 7, at 310–11 (featuring Ted Olson's on behalf of General Motors in *California v. GM*).

disrupt the ongoing political process." This effectively ties the Attorney General's good intentions to their counterproductive results, reinforcing the brief's theme.

By highlighting the constitutional missteps (e.g., separation of powers, federal preemption) and logical inconsistencies (California's own promotion of automobile culture), the conclusion underscores the dangers of well-intentioned overreach: "California, in particular, fosters a culture and identity that affirmatively encourages the use of the very product that it now seeks to brand as a nuisance." The conclusion closes by urging the court to terminate the lawsuit: "This suit is misconceived and pernicious and must be brought to a prompt and final termination."

As noted above, in the sample of merit briefs filed in cases being orally argued to the Supreme Court of Ohio during 2022, I also discovered persuasive conclusions exemplifying each of these rhetorical moves. I discuss my discoveries regarding the representative conclusions in the next subsection.

B. Representative Conclusions from the Supreme Court of Ohio Briefs

Of the briefs reviewed, all satisfied the functional purpose of a conclusion—that is, all the 155 conclusions reviewed included a statement of the relief requested. The conclusions in approximately 40% of the briefs (62 of the briefs) were limited to that plain statement of the relief requested and thus could be considered "formulaic conclusions." Here are two example formulaic conclusions:

Sample Conclusion 1—McClain v. State[91]

This Court should affirm.[92]

91. Merit Brief of Appellee, McClain v. State, 172 Ohio St. 3d 213 (2021-0718).

92. *Id.* at 18.

Sample Conclusion 2—State v. Drain[93]

> For all of the reasons set forth in the foregoing law and argument, the State asks this Court to affirm Defendant's convictions and sentence.[94]

Approximately 60% of the briefs reviewed (93 briefs) ended with a persuasive conclusion. Many of these persuasive conclusions used more than one persuasive technique from the taxonomy of techniques introduced in section II.A. From that taxonomy of techniques, the "summarize the main reasons why the court should do what the writer urges" technique was the most prominent. Of the 93 briefs that ended with a persuasive conclusion, 62 summarized the main reasons why the court should do what the writer urges. Take for example the following summary conclusion, written by the defendant-appellant in a case in which the issue presented was whether an attorney's misunderstanding of the offense elements can rebut presumptions of competence and reasonable trial strategy:[95]

> Ultimately, Lloyd argues that he was denied the effective assistance of counsel as guaranteed to him under the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sec. 10 of the Ohio Constitution. He asks this Court to find that the record shows that his counsel misunderstood the elements of the offense at issue, and, accordingly, that the presumptions of counsel's competence and reasonable trial strategy have been rebutted. Lloyd asks this Court to hold that the Eighth District erred in failing to conclude that he had rebutted the presumptions of competence and reasonable trial strategy, and Lloyd asks this Court to remand the case to the Eighth District Court of Appeals so that his ineffective assistance of counsel claims can be reviewed on the merits under a *Strickland* analysis.[96]

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93. Merit Brief of Appellee, State v. Drain, 168 Ohio St. 3d 1520 (2020-0652).
94. *Id.* at 99.
95. Merit Brief of Appellant, State v. Lloyd, 171 Ohio St. 3d 353 (2021-0860).
96. *Id.* at 18–19.

This summary conclusion reiterates the central argument—that defendant-appellate Lloyd was denied effective assistance of counsel. By explicitly referencing the Sixth and Fourteenth Amendments and the corresponding state constitutional provision, it reinforces the legal foundation for the argument. It directly addresses the issue presented in the case: whether an attorney's misunderstanding of the offense elements can rebut presumptions of competence and reasonable strategy. The conclusion avoids introducing new arguments or excessive detail, which keeps the focus on the key points. It summarizes the entire brief in a way that reminds the court of the argument's logical structure and importance.

Only 1 of the 62 summary conclusions was formatted in the same way as the brief's introduction. That conclusion can be found in the State's brief in *State v. Stansell*.[97] Both the introduction and the conclusion in that brief use explicit numbering to present the reasons why the court should rule in favor of the State. In the introduction, the brief lists four distinct reasons supporting the affirmation of the trial court's judgment.[98] Similarly, the summary conclusion reiterates these four points in a numbered format, creating a clear and logical alignment between the two sections:

> This Court should dismiss the case as improvidently allowed. Alternatively, the Court can affirm the judgment below because: (1) the doctrine of res judicata bars Stansell's challenge to his sexually violent predator conviction; (2) *Smith* does not apply retroactively; (3) the Eighth District was bound by the 2014 decision in *Stansell*, 8th Dist. Cuyahoga No. 100604, 2014-Ohio-1633; and (4) the traditional understanding of the voidness doctrine, as adopted by this Court, is neutral and applies equally to the state and the defendant.[99]

97. Merit Brief of Appellee, State v. Stansell, 165 Ohio St. 3d 1403 (2021-0948).

98. *Id.* at 2–4.

99. *Id.* at 30.

By maintaining the same numbered structure, the brief ensures that the reader can easily track the arguments from the beginning to the end, bolstering the overall persuasiveness of the document. The conclusion's brevity complements the detailed exposition in the introduction, reinforcing the key points without unnecessary repetition.

Fifteen of the briefs that ended with a persuasive conclusion "made a call for action or change." Writers of these briefs played to their readers' pragmatic concerns. For example, in one brief the writer argued that any disposition other than the one the writer sought would cause harm in the form of unnecessary costs being passed onto Ohio consumers:[100]

> The PUCO is obligated to implement the plain language of H.B. 128 and related statutes as the statutory language is clear and unambiguous. If the language is ambiguous or susceptible to multiple reasonable interpretations (which it is not), the PUCO must consider other factors evidencing the intent of the General Assembly. In establishing Rider SGF, the PUCO did not faithfully adhere to the General Assembly's directives plainly set forth in H.B. 128 or the General Assembly's intent as reflected in other sources. Failing to implement Rider SGF in a manner that comports with H.B. 128 and the related statutory provisions has resulted in the establishment of a recovery mechanism with an overstated, fixed revenue requirement and a cost cap that was applied in an unlawful manner to include all nonresidential customers eligible to become self-assessing purchasers. Moreover, Rider SGF as implemented will continue to pass unnecessary costs on to customers, especially those with multiple accounts, as the monthly charge has been established on a a [sic] per-account basis instead of a per-customer basis, includes a gross up for taxes, and does not contain a refund requirement.

100. Merit Brief of Appellant, Matter of Establishing the Solar Generation Fund Rider, 169 Ohio St. 3d 740 (2021-1374).

> For these reasons, Appellant respectfully requests that the Court find that the PUCO's July 14, 2021 Entry and September 8, 2021 Entry on Rehearing are unjust, unreasonable, and unlawful and reverse the PUCO's decisions.

And in another case, a criminal matter, the writer argued that a decision other than the one the writer sought would result in harm in the form of a "serial kidnapper/rapist and attempted murderer get[ting] away with his crimes:"[101]

> Revised Code §1.47 states that in enacting a statute, it is presumed that: " . . . (B) the entire statute is intended to be effective; and (C) a just and reasonable result is intended." As the Statute of Limitations is a procedural law rather than substantive law, the legislature requires the law to be construed so as to affect the fair, impartial, speedy, and sure administration of justice. RC §2901.04. The plain and unambiguous language of the Statute of Limitations is that there is no time limitation "for the prosecution of a violation of RC §2903.01." This case clearly involved a prosecution for a violation of RC §2903.01 and the State is not requesting this Court to add or subtract any language into the law but apply its plain meaning.
>
> To interpret the law in such a way to say that Attempted Burglary has a 20 year statute of limitations, but Attempted Aggravated Murder has a six year statute of limitations is not a just nor a reasonable result. It permits a serial kidnapper/rapist and attempted murderer get away with his crimes and it robs the victim of the small measure of justice she received for a lifetime of suffering Ralph Bortree put her through. The appellant's proposition of law should be overruled and the Judgment of the Third Appellate District affirmed.[102]

Eight persuasive conclusions became more general by putting the case in a broader context. Take for

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101. Merit Brief of Appellee, State v. Bortree, 170 Ohio St. 3d 310 (2021-1254).
102. *Id.* at 27.

example the following become-more-general conclusion in State v. Hough:[103]

> Without procedural safeguards at the trial and meaningful appellate review, Ohio's competency scheme fails to provide defendants with adequate procedures to protect their right to not be tried while incompetent. This reality is illustrated by Mr. Hough's case where the trial judge failed to hold a competency hearing and the court of appeals found the error harmless despite a record containing serious mental illness and intellectual deficits. In order to adequately protect these fundamental constitutional rights, Mr. Hough asks this court to clarify that unless contradicted by evidence that provides indicia of competence, counsel's filing of a competency motion is sufficient indicia of incompetence and remand his case to the trial court for a competency determination.[104]

This conclusion reframes Mr. Hough's case as an example of a systematic problem with Ohio competency scheme. It highlights how a lack of procedural safeguards and meaningful review undermines the rights of all defendants, not just Mr. Hough. Second, the conclusion shifts from the technical and procedural specifics of Mr. Hough's particular case to a general principle of fairness and due process. It therefore recontextualizes his case as an opportunity for the court to clarify the law and set a precedent.

Five briefs became more specific by ending with an apt quotation or pithy thought. Here's an example of a brief conclusion that ended with a pithy thought:[105]

> Appellant's argument, boiled down to its essence, is that the Common Pleas Court got it right, and the Fifth District got it wrong. This is not an error-reviewing Court. S.Ct.Prac.R. 5.02. Appellee

103. Merit Brief of Appellant, State v. Hough, 164 Ohio St. 3d 1456 (2021-0998).

104. *Id.* at 20.

105. Merit Brief of Appellee, Goudy v. Tuscarawas Cnty. Pub. Def., 171 Ohio St. 3d 173 (2021-0831).

> respectfully asks this Court to affirm the judgment of the Fifth District.[106]

The parting thought in this conclusion is pithy because it incorporates a well-known legal principle—e.g., my opponent isn't entitled to what he seeks because his argument, "boiled down to its essence, is that the [trial court] got it right, and the [intermediate appellate court] got it wrong. This [i.e., the Supreme Court] is not an error-reviewing Court."[107]

Here's an example of a brief conclusion that ended with an apt quotation:[108]

> "R.C. 2305.113(C) is a true statute of repose that, except as stated in R.C. 2305.113(C) and (D), clearly and unambiguously precludes the commencement of a medical claim more than four years after the occurrence of the alleged act or omission that forms the basis of the claim." If R.C. 2305.11(C) means what it says—and if this Court meant what it said in *Wilson*—then the judgment of the First District must be reversed.[109]

In this conclusion, the writer uses a quote from an earlier decision of the very court the current matter is pending before—the Supreme Court of Ohio—and states that the same results or reasoning applies to the writer's case.

And finally, twenty-six briefs in the sample ended with a conclusion that captured the theme of the brief. For example, the following thematic conclusion closed out NASCAR Holding's brief in a Board of Tax Appeals (BTA) case:[110]

> The BTA conceded that NASCAR was taxed under the wrong statute, calculating the wrong territory, and employing novel methodologies with no statutory support. Yet despite all those mistakes, the BTA

106. *Id.* at 50.

107. *Id.*

108. Merit Brief of Appellant, Elliot v. Durrani, 171 Ohio St. 3d 213 (2021-1352).

109. *Id.* at 24.

110. Merit Brief of Appellant, NASCAR Holdings, Inc. v. McClaine, 170 Ohio St. 3d 433 (2021-0578).

> still affirmed the CAT on NASCAR, creating an unconstitutional expansion of tax liability for out-of-state content providers. This Court should reject the BTA's limitless interpretation of R.C. 5751.033 that was created simply because the Tax Commissioner can sit on his couch, in Ohio, and watch NASCAR races.[111]

The conclusion encapsulates the core theme of the brief: that the BTA erred by affirming a fundamentally flawed tax assessment against NASCAR, which violates statutory authority and constitutional principles. This theme of improper and overreaching taxation runs throughout the argument, and the conclusion crystallizes it in a succinct and forceful way. By stating that the BTA's actions create an "unconstitutional expansion of tax liability for out-of-state content providers," the conclusion reiterates the brief's broader concern about the dangerous precedent this decision could set. And the final sentence—"the Tax Commissioner can sit on his couch, in Ohio, and watch NASCAR races"—humanizes and simplifies the issue. It reduces complex tax statutes and administrative errors to a relatable scenario that underscores the absurdity of the BTA's position.

Nearly half of the briefs, 65 briefs, use phrases like: "For the foregoing reasons," and "For the reasons stated."[112] Experts have labeled these phrases "trite," "lifeless," and "mindless," and suggested that they "gum up the flow of prose."[113]

In terms of length of the conclusions, approximately 43% of the sample conclusions were two sentences long or less. Approximately 32% of the conclusions were between two sentences and one paragraph long, approximately 21% were between a half-page and a full-page, and only 6% were longer than one page. Also, regarding length, I wondered if any of the writers who chose formulaic conclusions were up against the court-imposed page limit when they opted to use formulaic conclusions. The

111. *Id.* at 50.

112. *See supra* note 21.

113. Blackwell, *supra* note 22

court's rules provide that the brief generally should not exceed "fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix."[114] In this sample size, the answer appeared to be "no"—only 3 of the 62 briefs that employed formulaic conclusions were up against the fifty-page limit.[115]

In terms of the techniques employed by "winning briefs," I note the following results: 38% of the winning briefs employed formulaic conclusions and 62% employed persuasive conclusions. Of the winning briefs that employed persuasive conclusions, 57% employed summary conclusions, 20% employed thematic conclusions, 17% employed call to action conclusions, 13% employed become more general conclusions, and 4% employed become more specific conclusions. This analysis invites a further question: what correlation, if any, exists between the specific techniques employed in conclusion sections and the ultimate outcomes of the cases? Future research could explore whether certain types of conclusions statistically correlate with a greater likelihood of success.

III. CALL FOR ADDITIONAL RESEARCH AND CONCLUSION

The above discussion provides a deeper understanding of the purpose of the conclusion section, an explication of experts' observations about that section of the brief, and the first of its kind range of possibilities for the conclusion section.

Still, work remains to be done. While we are now aware of options for conclusions, we lack an

114. S.CT.PRAC.R 16.02(B) (providing rules for appellant's merit briefs); S.Ct.Prac.R 16.03(C) (providing rules for appellee's merit briefs).

115. Merit Brief of Appellee, State v. Bunch 2021-0579; Merit Brief of Appellee, Brandt v. Pompa 2021-0497; Merit Brief of Respondent, Inc., Neuro-Commc'n Servs., Inc. v. Cincinnati Ins. Co. 2021-0130.

understanding of what our audience thinks about the conclusion. Audience preference and reader habits are important.[116]

Experts disagree over reader advocacy preferences and reading habits. For example, a proponent of formulaic conclusions might argue that writers risk trying the readers' patience when their conclusions go further than a request for relief, and/or that readers do not dwell on conclusions, so a reader who wants to persuade is better off doing so earlier in the document. In response, a proponent of persuasive conclusions might argue that the conclusion occupies an important position of emphasis; the reader will remember and be influenced by the text in the conclusion paragraphs. Suffice to say, more work is needed to understand reader advocacy preferences and habits.[117]

A handful of studies have been done on advocacy preferences, the most recent of which was conducted in 2010,[118] but those studies either were not focused on the conclusion element of the brief and thus asked no

116. *E.g.*, Merling, *supra* note 11, at 301 (2006) (conducting a study of advocacy preferences in order to provide "practitioners with the views of staff attorneys on the practices best able to earn the respect of the judges and to maximize the chance of success on appeal").

117. Relatedly, more work is also needed to test recency in the legal context, and more specifically, to test how it works with regard to briefs and persuasive legal writing. *See* Stanchi, *supra* note 50, at 307 (observing that "[t]here are no studies from the persuasive writing and brief-writing arena, however, so at this point we can only speculate about whether primacy or recency would prevail in brief writing"). In the legal field, research and scholarship on primacy and recency is almost exclusively focused on trial practice and each canon's impact on jurors. Most of this work takes the form of practical guidance documents that are intended to provide litigators with advice on how to take advantage of recency and primacy during a jury trial. *E.g.,* Mark T. Gerard, *Primacy and Recency Effects in Trial*, THE LITIGATION GROUP (Mar. 1, 2015), https://www.litigationgroup.com/2015/03/01/winter-2015; Bill Kanasky, Jr., *The Primacy and Recency Effects: The Secret Weapons of Opening Statements*, 33 TRIAL ADVOC. Q. 26–29 (2014).

118. Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ASS'N LEGAL WRITING DIRS. 1, 18 (2010).

questions about that element[119] or asked few, general questions about the conclusion section.[120]

And as noted above, while judges, lawyers, and law professors have offered observations about the conclusion section, the sources are short on specifics about what makes an effective conclusion and how to create one. There is a need for instructor material to teach conclusions. Certainly, a taxonomy of possibilities for conclusions like the one presented in this article serves as an educational resource for law students. It exposes them to diverse rhetorical strategies and helps them understand how different conclusions can be crafted based on the facts, legal precedents, and arguments presented in a case. But additional work remains to be done to ensure that future lawyers are not, with their conclusions, missing an opportunity to persuade.

119. *Id.* In his study, Professor Chestek surveyed judges, staff attorneys, and law clerks about whether they found narrative or "story" briefs more persuasive than briefs written with pure logic. The survey collected data about participants' impressions of the overall briefs, the recitation of the facts sections of those briefs, and the argument sections of those briefs.

120. Bird & Kinnaird, *supra* note 5, at 151; Merling, *supra* note 11, at 304; Lewis, *supra* note 11, at 900–01. In each of these surveys, only three of the numerous survey questions were about the conclusion element of the brief. Bird & Kinnaird, *supra* note 5, at 161–62; Merling, *supra* note 11, at 304; Lewis, *supra* note 11, at 900–01. And none of the questions in any of the surveys got into the nuances of the taxonomy. Bird & Kinnaird, *supra* note 5, at 162; Merling, *supra* note 11, at 304; Lewis, *supra* note 11, at 900–01.

APPENDIX A: LIST OF BRIEFS STUDIED

- Elliot v. Durrani[121]
  - Merit Brief of Appellant, Abubakar Atiq Durrani
  - Merit Brief of Appellee, Richard Elliot
- EMOI Services, L.L.C. v. Owners Insurance Company[122]
  - Merit Brief of Appellant, Owners Insurance Company
  - Merit Brief of Appellee, EMOI Services, L.L.C.
- Ohio Power Company v. Burns, et al.[123]
  - Merit Brief of Appellant, Ohio Power Company
  - Merit Brief of Appellee, Michael Burns et al.
- State v. Ramunas[124]
  - Merit Brief of Appellant, State of Ohio
  - Merit Brief of Appellee, Kristen Ramunas
- In re The Adoption of H.P.[125]
  - Merit Brief of Appellants, Jeffrey P. and Nicole P.
  - Merit Brief of Appellant, Josephine D.
  - Merit Brief of Appellee, Kaiden W.
- State v. Ashcraft[126]
  - Merit Brief of Appellant, Michael P. Ashcraft
  - Merit Brief of Appellee, State of Ohio

121. Elliot v. Durrani, 171 Ohio St. 3d 213 (2021-1352).
122. EMOI Servs., L.L.C. v. Owners Ins. Co., 170 Ohio St. 3d 78 (2021-1529).
123. Ohio Power Co. v. Burns, 171 Ohio St. 3d 84 (2021-1168).
124. State v. Ramunas, 171 Ohio St. 3d 579 (2021-1380).
125. In re Adoption of H.P., 171 Ohio St. 3d 453 (2022-0159).
126. State v. Ashcraft, 171 Ohio St. 3d 747 (2021-1491).

- State v. Bailey[127]
  - Merit Brief of Appellant, State of Ohio
  - Merit Brief of Appellee, Tytus Bailey
- State v. Fisk[128]
  - Merit Brief of Appellant, State of Ohio
  - Merit Brief of Appellee, Zacary Fisk
- Matter of Establishing the Solar Generation Fund Rider[129]
  - Merit Brief of Appellant, Ohio Manufacturer's Association
  - Merit Brief of Appellee, Public Utilities Commission of Ohio
  - Merit Brief of Intervening Appellee, Ohio Power Company
- TWISM Enterprises, LLC, d.b.a. VALUCADD Solutions v. State Board of Registration for Professional Engineers and Surveyors[130]
  - Merit Brief of Appellant, TWISM Enterprises
  - Merit Brief of Appellee, State Board of Registration for Professional Engineers and Surveyors
- State v. Morris[131]
  - Merit Brief of Appellant, Tyler A. Morris (a.k.a. Tyles Mullins)
  - Brief of Amicus Curiae, Ohio Attorney General Dave Yost in support of appellee

127. State v. Bailey, 171 Ohio St. 3d 486 (2021-1432).

128. State v. Fisk, 171 Ohio St. 3d 479 (2021-1047).

129. Matter of Establishing the Solar Generation Fund Rider, 169 Ohio St. 3d 740 (2021-1374)

130. TWISM Enterprises, L.L.C. v. State Bd. of Registration for Pro. Eng'rs & Surveyors, 172 Ohio St. 3d 225 (2021-1440).

131. State v. Morris, 167 Ohio St. 3d 1441 (2021-1158).

- Jane Doe 1, a minor, et al. v. Greenville City Schools, et al.[132]
    - Merit Brief of Appellants, Greenville City Schools et al.
    - Merit Brief of Appellee, Jane Doe 1, a minor, et al.
- State v. Bortree[133]
    - Merit Brief of Appellant, Ralph E. Bortree
    - Merit Brief of Appellee, State of Ohio
- State v. Martin[134]
    - Merit Brief of Appellant, Tysean Martin
    - Merit Brief of Appellee, State of Ohio
- State v. Garrett[135]
    - Merit Brief of Appellant, Kristofer D. Garrett
    - Merit Brief of Appellee, State of Ohio
- State v. Troisi, et al.[136]
    - Merit Brief of Appellant, Jon Troisi et al.
    - Merit Brief of Appellee, State of Ohio
- Willow Grove, Ltd. v. Olmsted Township Board of Zoning Appeals, et al.[137]
    - Merit Brief of Appellant, Willow Grove Ltd.
    - Merit Brief of Appellee, Olmsted Township Board of Zoning Appeals
- State v. Lloyd[138]

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132. Doe v. Greenville City Sch., 171 Ohio St. 3d 763 (2021-0980).
133. State v. Bortree, 170 Ohio St. 3d 310 (2021-1254).
134. State v. Martin, 165 Ohio St. 3d 1449 (2021-0967).
135. State v. Garrett, 169 Ohio St. 3d 1478 (2019-1381).
136. State v. Troisi, 169 Ohio St. 3d 514 (2021-1182).
137. Willow Grove, Ltd. v. Olmsted Twp. Bd. of Zoning Appeals, 169 Ohio St. 3d 759 (2021-1087).
138. State v. Lloyd, 164 Ohio St. 3d 1446 (2021-0860).

    - Merit Brief of Appellant, Cronie W. Lloyd
    - Merit Brief of Appellee, State of Ohio
- State v. Gwynne[139]
    - Merit Brief of Appellant, Susan Gwynne
    - Merit Brief of Appellee, State of Ohio
- Stewart v. Solutions Community Counseling and Recovery Centers, Inc., et al.[140]
    - Merit Brief of Appellant, Solutions Community Counseling and Recovery Centers
    - Merit Brief of Appellee, Bonita Stewart
- State v. Brasher[141]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Victim-Appellant, D.H.
    - Merit Brief of Appellee, Kyle Brasher
- In re D.R.[142]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Appellee, D.R.
- State v. Messenger[143]
    - Merit Brief of Appellant, Kandle G. Messenger
    - Merit Brief of Appellee, State of Ohio
- State ex rel. Candy Bowling, et al. v. DeWine, et al.[144]
    - Merit Brief of Appellant, Mike DeWine et al.

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139. State v. Gwynne, 173 Ohio St. 3d 525 (2021-1033).

140. Stewart v. Sols. Cmty. Counseling & Recovery Centers, Inc., 168 Ohio St. 3d 96 (2021-1163).

141. State v. Brasher, 171 Ohio St. 3d 534 (2021-1060).

142. In re D.R., 172 Ohio St. 3d 495 (2021-0934).

143. State v. Messenger, 171 Ohio St. 3d 227 (2021-0944).

144. State ex rel. Bowling v. DeWine, 170 Ohio St. 3d 244 (2021-1062).

    - Merit Brief of Appellee, Candy Bowling et al.
- Valentine v. Cedar Fair, L.P.[145]
    - Merit Brief of Appellant, Cedar Fair L.P.
    - Merit Brief of Appellee, Laura Valentine
- McClain v. State[146]
    - Merit Brief of Appellant, Anthony McClain
    - Merit Brief of Appellee, State of Ohio
- State v. Stansell[147]
    - Merit Brief of Appellant, Michael Stansell
    - Merit Brief of Appellee, State of Ohio
- Morey v. Campbell[148]
    - Merit Brief of Appellants, Carol and Richard Speelman
    - Merit Brief of Appellee, Savannah Campbell
- In re Estate of Fleenor v. Ottawa Cty.[149]
    - Merit Brief of Appellant, Ottawa County
    - Merit Brief of Appellee, Estate of Jenning Fleenor
- State v. Jackson et al.[150]
    - Merit Brief of Appellant, Allegheny Casualty Company
    - Merit Brief of Appellee, State of Ohio

145. Valentine v. Cedar Fair, L.P., 169 Ohio St. 3d 181 (2021-0981).
146. McClain v. State, 172 Ohio St. 3d 213 (2021-0718).
147. State v. Stansell, 165 Ohio St. 3d 1402 (2021-0948).
148. Morey v. Campbell, 168 Ohio St. 3d 153 (2021-1199).
149. Est. of Fleenor v. Ottawa Cty, 165 Ohio St. 3d 1423 (2021-1004).
150. State v. Jackson, 168 Ohio St. 3d 632 (2021-0742).

- State v. Hill[151]
  - Merit Brief of Appellant, Davis Anthony Hill
  - Merit Brief of Appellee, State of Ohio
- Bliss v. Johns Manville[152]
  - Merit Brief of Appellant, Robert Bliss
  - Merit Brief of Appellee, Johns Manville
- State v. McNeal[153]
  - Merit Brief of Appellant, Tracy K. McNeal
  - Merit Brief of Appellee, State of Ohio
- In re T.A.[154]
  - Merit Brief of Appellant, T.A.
  - Merit Brief of Appellee, State of Ohio
- Goudy v. Tuscarawas County Public Defender's Office[155]
  - Merit Brief of Appellant, Kristy Goudy
  - Merit Brief of Appellee, Tuscarawas County Public Defender's Office
- State v. Weaver[156]
  - Merit Brief of Appellant, Emile Weaver
  - Merit Brief of Appellee, State of Ohio
- State v. Sanford[157]
  - Merit Brief of Appellant, Andre Sanford
  - Merit Brief of Appellee, State of Ohio

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151. State v. Hill, 171 Ohio St. 3d 524 (2021-0913).
152. Bliss v. Johns Manville, 172 Ohio St. 3d 367 (2021-0800).
153. State v. McNeal, 169 Ohio St. 3d 47 (2021-0744).
154. In re T.A., 171 Ohio St. 3d 44 (2021-1018).
155. Goudy v. Tuscarawas Cnty. Pub. Def., 170 Ohio St. 3d 173 (2021-0831).
156. State v. Weaver, 171 Ohio St. 3d 429 (2021-0622).
157. State v. Sanford, 170 Ohio St. 3d 204 (2021-0801).

- State v. Schubert[158]
    - Merit Brief of Appellant, Alan Schubert
    - Merit Brief of Appellee, State of Ohio
- State ex rel. Hicks v. Clermont County Board of Commissioners[159]
    - Merit Brief of Appellant, Clermont County Board of Commissioners
    - Merit Brief of Appellee, Christopher Hicks
- Matters of: J.F., Adjudicated Neglected Child, and J.A.F., Adjudicated Dependent Child[160]
    - Merit Brief of Appellant, L.A.
    - Merit Brief of Appellee, Jackson County Job and Family Services (unavailable online because the case involved a minor).
- State v. Hough[161]
    - Merit Brief of Appellant, Richard M. Hough
    - Merit Brief of Appellee, State of Ohio
- State v. Fuell[162]
    - Merit Brief of Appellant, Austin Fuell
    - Merit Brief of Appellee, State of Ohio
- Maple Heights v. Netflix, Inc[163]
    - Merit Brief of Petitioner, Hulu, LLC
    - Merit Brief of Petitioner, Netflix, Inc.
    - Merit Brief of Respondent, City of Maple Heights

158. State v. Schubert, 171 Ohio St. 3d 617 (2021-0761).

159. State ex rel. Hicks v. Clermont Cnty. Bd. of Commissioners, 171 Ohio St. 3d 593 (2021-0611).

160. In re J.F., 167 Ohio St. 3d 487 (2021-1172).

161. State v. Hough, 169 Ohio St. 3d 769 (2021-0998).

162. State v. Fuell, 168 Ohio St. 3d 631 (2021-0794).

163. Maple Heights v. Netflix, Inc., 171 Ohio St. 3d 53 (2021-0864).

- State v. Bollar[164]
  - Merit Brief of Appellant, Marquis Bollar
  - Merit Brief of Appellee, State of Ohio
- Navistar, Inc. v. Dutchmaid Logistics, Inc[165]
  - Merit Brief of Appellant, Navistar, Inc.
  - Merit Brief of Appellee, Dutchmaid Logistics, Inc.
- State v. Lewis[166]
  - Merit Brief of Appellant, Frank Lewis
  - Merit Brief of Appellee, State of Ohio
- State v. Bunch[167]
  - Merit Brief of Appellant, Chaz Bunch
  - Merit Brief of Appellee, State of Ohio
- State v. Barnes[168]
  - Merit Brief of Appellant, Terry Barnes
  - Merit Brief of Appellee, State of Ohio
- State v. Belville[169]
  - Merit Brief of Appellant, David Belville
  - Merit Brief of Appellee, State of Ohio
- State v. Hatton[170]
  - Merit Brief of Appellant, Martin Hatton
  - Merit Brief of Appellee, State of Ohio

164. State v. Bollar, 171 Ohio St. 3d 678 (2021-0769).
165. Navistar, Inc. v. Dutchmaid Logistics, Inc., 167 Ohio St. 3d 1505 (2021-0719).
166. State v. Lewis, 168 Ohio St. 3d 245 (2021-0691).
167. State v. Bunch, 171 Ohio St. 3d 775 (2021-0579).
168. State v. Barnes, 172 Ohio St. 3d 63 (2021-0670).
169. State v. Belville, 171 Ohio St. 3d 5 (2021-0483).
170. State v. Hatton, 169 Ohio St. 3d 446 (2021-0704).

- Brandt v. Pompa, et al[171]
    - Merit Brief of Appellant, Amanda Brandt
    - Merit Brief of Appellee, Roy Pompa
- State v. Yontz[172]
    - Merit Brief of Appellant, Vernon L. Yontz, II
- State v. Bellamy[173]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Appellee, Eric Bellamy
- State v. Jackson[174]
    - Merit Brief of Appellant, Jackie Jackson
    - Merit Brief of Appellee, State of Ohio
- Walling v. Brenya et al.[175]
    - Merit Brief of Appellant, Michael Walling
    - Merit Brief of Appellee, Toledo Hospital
- State v. Brown[176]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Appellee, Monai Brown
- Ames v. Rootstown Township Board of Trustees[177]
    - Merit Brief of Appellant, Brian M. Ames
    - Merit Brief of Appellee, Rootstown Township Board of Trustees

171. Brandt v. Pompa, 171 Ohio St. 3d 693 (2021-0497).
172. State v. Yontz, 169 Ohio St. 3d 55 (2021-0382).
173. State v. Bellamy, 169 Ohio St. 3d 366 (2021-0481).
174. State v. Jackson, 163 Ohio St. 3d 1439 (2021-0452).
175. Walling v. Brenya, 171 Ohio St. 3d 346 (2021-0241).
176. State v. Brown, 171 Ohio St. 3d 303 (2021-0392).
177. Ames v. Rootstown Twp. Bd. of Trustees, 172 Ohio St. 3d 1 (2021-0706).

- State v. Stutler[178]
    - Merit Brief of Appellant, Jeremy Stutler
    - Merit Brief of Appellee, State of Ohio
- State v. Blanton[179]
    - Merit Brief of Appellant, Denny W. Blanton, Jr.
    - Merit Brief of Appellee, State of Ohio
- State v. Drain[180]
    - Merit Brief of Appellant, Victoria Drain
    - Merit Brief of Appellee, State of Ohio
- Michael v. Miller[181]
    - Merit Brief of Appellant, Cody A. Miller
    - Merit Brief of Appellee, Karen Michael
- State v. Haynes[182]
    - Merit Brief of Appellant, Ernie Haynes
    - Merit Brief of Appellee, State of Ohio
- State v. Moore[183]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Appellee, Gerry Moore
- Newburgh Heights, et al. v. State[184]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Appellee, Village of Newburgh Heights and City of East Cleveland

178. State v. Stutler, 169 Ohio St. 3d 639 (2021-0428).
179. State v. Blanton, 171 Ohio St. 3d 19 (2021-0172).
180. State v. Drain, 170 Ohio St. 3d 107 (2020-0652).
181. Michael v. Miller, 171 Ohio St. 3d 733 (2021-0361).
182. State v. Haynes, 171 Ohio St. 3d 508 (2021-0215).
183. State v. Moore, 169 Ohio St. 3d 18 (2021-0266).
184. Newburgh Heights v. State, 168 Ohio St. 3d 513 (2021-0247).

- Portage County Educators Association for Developmental Disabilities—Unit B, OEA/NEA v. State Employment Relations Board[185]
    - Merit Brief of Appellant, Portage County Board of Developmental Disabilities
    - Merit Brief of Appellant, State Employment Relations Board
    - Merit Brief of Appellee, Portage County Educators Association for Developmental Disabilities
- State v. Hansard[186]
    - Merit Brief of Appellant, David S. Hansard
    - Merit Brief of Appellee, State of Ohio
- State v. G.K.[187]
    - Merit Brief of Appellant, State of Ohio
    - Merit Brief of Appellee, G.K.
- Neuro-Communication Services Inc., etc., v. Cincinnati Insurance Company et al.[188]
    - Merit Brief of Petitioners, Cincinnati Insurance Company et al.
    - Merit Brief of Respondent, Neuro-Communication Services, Inc.
- Bunta v. Mast[189]
    - Merit Brief of Appellant, Firman D. Mast
    - Merit Brief of Appellee, Vasile Bunta

185. Portage Cnty. Educators Assn. for Dev. Disabilities—Unit B, OEA/NEA v. State Emp. Rels. Bd., 162 Ohio St. 3d 1443 (2021-0191).

186. State v. Hansard, 162 Ohio St. 3d 1427 (2021-0019).

187. State v. G.K., 169 Ohio St. 3d 266 (2021-0124).

188. Neuro-Commc'n Servs., Inc. v. Cincinnati Ins. Co., 171 Ohio St. 3d 606 (2021-0130).

189. Bunta v. Mast, 162 Ohio St. 3d 1427 (2021-0066).

- Clawson v. Heights Chiropractic Physicians, LLC, et al.[190]
    - Merit Brief of Appellant, Heights Chiropractic Physicians, LLC, et al.
    - Merit Brief of Appellee, Cynthia Clawson
- French et al. v. Ascent Resources—Utica, LLC[191]
    - Merit Brief of Appellant, Michael P. French et al.
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- Barrow, et al. v. New Miami[192]
    - Merit Brief of Appellant, Doreen Barrow et al.
    - Merit Brief of Appellee, Village of New Miami
- State v. Kidd[193]
    - Merit Brief of Appellant, Shannon Kidd
    - Merit Brief of Appellee, State of Ohio
- Cruz, et al. v. English Nanny & Governess School, et al.[194]
    - Merit Brief of Appellant, Christina Cruz
    - Merit Brief of Appellee, English Nanny & Governess School et al.
- State v. Brunson[195]
    - Merit Brief of Appellant, Nigel J. Brunson

190. Clawson v. Heights Chiropractic Physicians, L.L.C, 170 Ohio St. 3d 451 (2020-1574).

191. French v. Ascent Res.—Utica, L.L.C., 167 Ohio St. 3d 398 (2021-0166).

192. Barrow v. New Miami, 162 Ohio St. 3d 1420 (2021-0151).

193. State v. Kidd, 166 Ohio St. 3d 423 (2021-0026).

194. Cruz v. Eng. Nanny & Governess Sch., 169 Ohio St. 3d 716 (2020-1247).

195. State v. Brunson, 171 Ohio St. 3d 384 (2020-1505).

- Merit Brief of Appellee, State of Ohio

- NASCAR Holdings, Inc., et al. v. McClain, et al.[196]
  - Merit Brief of Appellant, NASCAR Holdings, Inc.
  - Merit Brief of Appellee, Jeffrey A. McClain, Tax Commissioner of Ohio

196. NASCAR Holdings, Inc. v. McClain, 170 Ohio St. 3d 433 (2021-0578).