

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 804

Representative Grendell

**Cosponsors: Representatives Jordan, Perales, Cross, Becker, Keller, Lang,
Wiggam, Powell, Carruthers**

A BILL

To enact sections 2731.21 and 2731.22 of the 1
Revised Code to provide for a writ of mandamus 2
or prohibition to enforce a person's 3
constitutional right against a chief 4
administrative officer or elected executive 5
official whose duty is to uphold the Ohio and 6
United States Constitutions. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2731.21 and 2731.22 of the 8
Revised Code be enacted to read as follows: 9

Sec. 2731.21. (A) As used in this section and section 10
2731.22 of the Revised Code: 11

(1) "Chief administrative officer" means the director of a 12
state agency or, in the case of a state agency without a 13
director, the equivalent officer of that agency. 14

(2) "Defendant" means any elected executive official or 15
chief administrative officer who has a clear legal duty to 16
uphold the Ohio Constitution and the United States Constitution. 17

(3) "Elected executive official" means the governor, 18
lieutenant governor, secretary of state, auditor of state, 19
treasurer of state, and the attorney general. 20

(4) "State agency" means any organized body, office, 21
agency, institution, or other entity established by the laws of 22
the state for the exercise of any function of government. 23

(B) Any individual with an enforceable and clear legal 24
right, based on a specific set of alleged facts, under the Ohio 25
Constitution or the United States Constitution, including, but 26
not limited to, such clear legal right under the first, second, 27
fourth, or fifth amendment to the United States Constitution, 28
may apply to the supreme court, the court of appeals in the 29
district where the individual resides, or the court of common 30
pleas in the county where the individual resides, for a writ of 31
mandamus to compel the defendant to comply with the defendant's 32
clear legal duty, based on the same specific set of alleged 33
facts underlying the applicant's clear legal right, to uphold 34
the Ohio Constitution and the United States Constitution by 35
enforcing the applicant's clear legal right as described in this 36
division. 37

(C) (1) The application for the writ of mandamus under 38
division (B) of this section shall be by petition, in the name 39
of the state on the relation of the individual applying for the 40
writ, verified by affidavit, and stating in the affidavit that 41
the applicant has no plain and adequate remedy in the ordinary 42
course of the law, since a violation of a constitutional right 43
is alleged, to enforce the applicant's clear legal right under 44
that division. 45

(2) The court may require notice of the petition to be 46
given to the defendant, or grant an order to show cause why it 47

should not be allowed.

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(D) The procedures in sections 2731.01 to 2731.13 of the
Revised Code, insofar as applicable, apply to a petition for a
writ of mandamus under this section.

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Sec. 2731.22. (A) Any individual with an enforceable and
clear legal right, based on a specific set of alleged facts,
under the Ohio Constitution or the United States Constitution,
including, but not limited to, such clear legal right under the
first, second, fourth, or fifth amendment to the United States
Constitution, may apply to the supreme court, the court of
appeals in the district where the individual resides, or the
court of common pleas in the county where the individual resides
for a writ of prohibition to prohibit the defendant from acting
in violation of the individual's clear legal right described in
this division and which right the defendant shall not violate,
based on the same specific set of alleged facts underlying the
applicant's clear legal right, by virtue of the defendant's
clear legal duty to uphold the Ohio Constitution and the United
States Constitution.

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(B) The application for the writ of prohibition under
division (A) of this section shall be by petition, in the name
of the state on the relation of the individual applying for the
writ, verified by affidavit, and stating in the affidavit that
the applicant has no plain and adequate remedy in the ordinary
course of the law, since a violation of a constitutional right
is alleged, to enforce the applicant's clear legal right under
that division.

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(C) Upon notice given to the defendant and the defendant's
reply, the court shall hold a hearing on the applicant's
petition for a writ of prohibition.

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<u>(D) On good cause shown, the court may either grant or</u>	78
<u>deny the applicant's petition for a writ of prohibition.</u>	79