M|M|&|P

Client Bulletin

Volume XL, No. 6 June 30, 2023

MANOS, MARTIN & PERGRAM CO., LPA

50 North Sandusky Street
Delaware, Ohio 43015
Phone: (740) 363-1313
Fax: (740) 363-1314

Client Focused, Client First Since 1951

We are always grateful for your trust in recommending us to others. A referral from you and your continued business are the highest compliments we could ever receive.

Inside this issue:

Ohio Supreme Court to Reconsider Case Involving Gerrymandering

If you need some "light" summer beach reading, you are in luck. The United States Supreme Court stuck to its norm of releasing a slew of decisions at the end of June, prior to its summer recess. The most recent batch - and last before the justices take a break - tackled hot-button issues regarding affirmative action in higher education, student loan forgiveness, and LGBTQ discrimination protection/religious freedom. The Court also addressed the controversial issue of political gerrymandering[1] – a term that refers to the practice of drawing the boundaries of electoral districts in such a way that gives an advantage to one political party over another.

The United States Supreme Court set aside the Ohio Supreme Court's 2022 ruling in *Huffman v. Neiman*, which struck down U.S. House district voting maps enacted by GOP state officials based on unlawful partisan gerrymandering. The Ohio Supreme Court was ordered to reassess *Huffman* considering a similar newly released North Carolina decision (*Moore v. Harper*). In both *Huffman* and *Moore*, Republican lawmakers argued that the states' highest courts erred when invalidating the congressional maps based on the "independent state legislature" theory. A strict interpretation of this legal theory is that the United States Constitution severely limits the role state courts can play in policing rules for federal elections adopted by state legislatures. The United States Supreme Court rejected the notion that state legislatures should control federal elections with no judicial review by the courts.

The United States Supreme Court, however, noted that state courts "do not have free rein" to exceed "the ordinary bounds of judicial review." Thus, *Huffman* will be reconsidered based on the notion that judicial review, while appropriate, is not unfettered. Just what *is* considered overstepping? The Court left that question open to be inevitably litigated in the future. Regardless, the majority sent a clear message that the need for checks and balances still exists.

It will be interesting for Ohio voters to see what the Ohio Supreme Court ultimately decides. While *Huffman*'s appeal was pending, there was a realignment of the Ohio Supreme Court justices. Former Ohio Chief Justice Maureen O'Connor, who cast the swing vote striking down the congressional maps, has since retired due to age limits. Her successor, Joe Deters, is also a Republican who could have a different take on the matter. Regardless of the outcome, the congressional maps will affect all future Ohio federal elections…and for that reason alone, stay tuned!

Elizabeth A. Miceli, Esq.

---

[1]When I first heard the term "gerrymandering" while studying political science in college, I recall snickering in class (called Ohio Politics). I thought, how is this word possibly related to its meaning? As it turns out, the term was first used in 1812 and references a combination of a salamander and Elbridge Gerry. Gerry was a Massachusetts Governor who signed a bill that redistricted the state for the benefit of the then Democratic-Republican Party. Apparently, when mapped out, the districts around Boston resembled a salamander. And now you know!

MANOS, MARTIN & PERGRAM CO., LPA

50 North Sandusky Street
Delaware, Ohio 43015

Phone: (740) 363-1313
Fax: (740) 363-1314

Visit us on the web
www. mmpdlaw.com

Find us on Facebook

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates whom you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

Is Your Company Ready for the New Pregnancy Laws?

June 27, 2023 will mark the first day that the Equal Employment Opportunity Commission (EEOC) will start accepting charges for alleged employer violations of the Pregnant Workers Fairness Act (PWFA). The PWFA protects employees and applicants who have known limitations related to pregnancy, childbirth or related medical conditions. Employers with 15 or more employees must provide these employees and applicants with reasonable accommodations in the workplace unless doing so would create an undue hardship on the employer.

The EEOC will be issuing regulations to provide further guidance on the law later in the year. In the meantime, employers who have pregnant employees or applicants who express the need for an accommodation to enable them to perform their jobs should engage in documented communication with the pregnant individual about her needs. This interaction with the individual is similar to the conversation that employers would have with employees or applicants under the Americans with Disabilities Act (ADA), with one key difference. Under the ADA, an individual is qualified for the job so long as he or she can perform the essential functions of the job with or without a reasonable accommodation. Employers and employees engage in a dialogue to discuss what is needed and what can be reasonably be provided to meet that need, and then the employer documents both the communication and the confirmation of the offering of the accommodation.

Under the PWFA, pregnant individuals are qualified for the job if they can perform the essential functions of the job with or without a reasonable accommodation *OR* if their ability to perform an essential function of the job is temporary and can be reasonably accommodated. In other words, employers will need to consider a pregnant employee's *temporary* inability to perform essential functions, and provide a reasonable accommodation around that temporary inability, if a reasonable accommodation does not create an undue burden. Some suggested accommodations including permitting the individual the ability to sit or drink water, receive closer parking, have flexible hours, receive appropriately sized uniforms and safety apparel, receive additional break time to use the bathroom, eat, and rest, take leave or time off to recover from childbirth (which may not otherwise be available under the Family Medical Leave Act), and be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

Employers should ensure that their handbooks and policies are appropriately updated with this new law, if necessary. Employers should also ensure that its hiring managers and supervisors are aware of the need to consider pregnant employees and applicants' temporary inability to perform certain essential functions of the job and provide reasonable accommodations as appropriate.

Contact Manos, Martin & Pergram with any questions or concerns on how to comply with the mandates of this new law.

Stacy V. Pollock, Esq.