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Mark Wagoner and Richard Walinski Co-Author Article Published in The University of Toledo Law Review

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Download: The Constitutional Conundrum of Magistrates' Authority to Act Independently of Judicial Supervision, 52 U. Tol. L. REV. 41

TOLEDO, OH – Shumaker Partner and Litigation Service Line Leader Mark Wagoner co-authored an article with Richard Walinski that was recently published in *The University of Toledo Law Review*, [The Constitutional Conundrum of Magistrates' Authority to Act Independently of Judicial Supervision, 52 U. Tol. L. REV. 41 \(2021\)](#). In the article, they analyze the authority of magistrates in both the federal and Ohio court systems.

The federal office of magistrate judge was created by Congress. The U.S. Code allows district court judges to select and appoint magistrate judges to serve as inferior judicial officers. In Ohio, the office of magistrate has been established in rules promulgated by the Ohio Supreme Court. The court allows elected judges to select and appoint magistrates to assist them in the exercise of judicial functions.

Magistrates in both the federal and Ohio judicial systems can sometimes serve as substitute judges. In some cases, they can exercise full judicial power equivalent to that of judges, but only if all parties in the case consent. Ohio allows magistrates to serve as substitute judges in far fewer circumstances than federal law permits.

The United States Supreme Court has never decided whether Congress has the constitutional authority to allow magistrate judges to exercise the judicial power of the United States to the same, full extent as district court judges. Similarly, the Ohio Supreme Court has not decided whether nonelected magistrates may exercise the state's judicial power as fully as the Ohio Constitution empowers elected judges to exercise.

In the article, Mark and Richard recommend answers to both.

Mark is an accomplished trial attorney, former Majority Whip and Chair of the Judiciary Committee of the Ohio Senate, and was one of 20 members of the Ohio Constitutional Modernization Commission. Mark is the Litigation Service Leader for Shumaker and he has been repeatedly recognized by *Best Lawyers in America* and other publications for his litigation and antitrust practice.

Richard also a civil trial lawyer and is counsel to Brouse McDowell. He previously served as Chief Counsel to the Ohio Attorney General and was also a member of the Ohio Constitutional Modernization Commission.