AVOIDING REJECTION: STUDYING WHEN AND WHY STATE COURTS DECLINE CERTIFIED QUESTIONS

*Rachel Koehn Breland**

In December 2018, the U.S. Court of Appeals for the Sixth Circuit declared Tennessee's punitive damages cap statute unconstitutional under the state's constitution. Nearly five years later, however, Tennessee state courts are still reducing punitive damage awards under the statute—and they must, because the Tennessee Supreme Court has never addressed the statute's constitutionality. See, the Sixth Circuit's decision was merely an Erie *guess as to how Tennessee courts would resolve the unsettled state law issue, and the Tennessee Supreme Court has since indicated that it would reach the opposite conclusion. But the Tennessee high court had already had an opportunity to do so explicitly in the very case in which the Sixth Circuit refused to enforce the punitive damages cap. The federal district court had certified questions about the statute's constitutionality to the Tennessee Supreme Court, which kept the case on its docket for seven months only to decline the questions. Given this response, the Sixth Circuit understandably opted against a second attempt at certification on appeal. As a result, under the current state of the law in Tennessee, plaintiffs who receive identical punitive damage awards from juries in federal and state courts could ultimately recover drastically different amounts.*

This Tennessee example well illustrates some of the difficulties that federal courts and litigants face when state supreme courts decline certified questions of unsettled state law: the risk of an incorrect Erie *guess that creates inconsistent results in federal and state courts, the potential for months-long delays while the case lingers before the state court, and the resulting reluctance of federal courts to certify in the future. Further, because few states articulate criteria for accepting or declining certification and no state's certification scheme requires the state court to explain its reasons for declining certified questions, those seeking certification are left with little guidance as to how to avoid these dreaded rejections by state high courts. To provide that guidance, this Article studies certification practices in the three jurisdictions in which certified questions were declined most*

* Visiting Assistant Professor, South Texas College of Law Houston. I would like to thank Rocky Rhodes, Jeff Rensberger, Mike Barry, and the participants in the 2023 SEALS Prospective Law Teachers Workshop for providing insightful comments on earlier drafts of this Article. I am also grateful to the staff of the *Fordham Law Review* for their effort and care in editing the piece.

frequently over the last two decades and identifies patterns in when and why state courts decline certification. The Article then proposes procedural solutions, including a presumption mechanism for the acceptance of certified questions in appropriate cases, to reduce the frequency of certification denials and better equip federal courts and litigants to predict which certified questions state courts are likely to answer.

INTRODUCTION

The procedural mechanism referred to as "certification" permits a federal court to submit an unsettled issue of state law to the highest court of that state to address.[1] It originated in a Florida statute that was ignored for over a decade until the U.S. Supreme Court took notice and lauded the Florida legislature's "rare foresight" in enabling federal courts facing "doubtful questions of state law" to seek assistance from their state counterparts.[2] In the half-century since, forty-nine states and the District of Columbia have implemented certification schemes[3] and thus opened up the lines of communication between federal and state courts in cases in which the federal court lacks existing precedent to guide its *Erie* guess.[4]

Certifying a question to a state court of last resort involves a twofold exercise of discretion.[5] First, the federal court must decide whether the question or questions before it are appropriate for certification.[6] To do so,

1. *See* Unif. Certification of Questions of L. Act, prefatory note, at 1–4 (Nat'l Conf. of Comm'rs on Unif. State L. 1995). This term also refers to the practice in some states of permitting the state court of last resort or an intermediate appellate court to certify questions to the highest court of another state. *Id.* at 5–6. This Article focuses only on federal-to-state certification.

2. Clay v. Sun Ins. Off. Ltd., 363 U.S. 207, 212 (1960).

3. *See infra* note 53.

4. An *Erie* guess is a federal court prediction as to how a state's highest court would answer an unsettled question of state law. *See infra* note 34; *see also* Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

5. *See* Unif. Certification of Questions of L. Act § 3.

6. *See id.*

the court must consider the requirements for such questions in the relevant state's certification statute or rule, as well as any other considerations the federal court has formulated to guide its decision.[7] Then, assuming the federal court decides to certify, the receiving state court must decide anew whether certification is warranted under the same standard that the federal court has already considered: the requirements provided in the certification scheme in that state.[8] Inevitably, there are occasions when, despite the able federal court's conclusion that a particular case calls for certification, the state court is convinced of the opposite and declines the certification request.[9]

Although clearly permitted under every state's certification mechanism, these state court declinations of certified questions can pose difficulties for the litigants involved and the certifying federal court. The Sixth Circuit case *Lindenberg v. Jackson National Life Insurance Co.*[10] illustrates some of these issues.[11] There, the plaintiff had received a jury verdict in her favor that included an award of $3 million in punitive damages.[12] The defendant's posttrial motion sought reduction of the punitive damage award to $700,000 in accordance with Tennessee's statutory cap on punitive damages, but the plaintiff challenged the statutory cap as unconstitutional.[13] Finding no controlling Tennessee authority on the issue, the U.S. District Court for the Western District of Tennessee certified questions about the statute's constitutionality to the Tennessee Supreme Court.[14] Seven months later, that court declined to answer the questions, although it suggested that the Sixth Circuit could try to certify again on appeal.[15] The Sixth Circuit, however, did not certify the questions on appeal and also denied rehearing en banc on the certification issue, with one justice suggesting that the Tennessee Supreme Court's prior rejection of the certified questions was what prompted the Sixth Circuit to "elect against a second certification attempt."[16]

Instead the Sixth Circuit went on to make an *Erie* guess as to the statutory cap's constitutionality, ultimately declaring it unconstitutional under the Tennessee Constitution.[17] Two months later, the Tennessee Supreme Court indicated that it would have held the opposite, deeming *Lindenberg*

7. *See id.*; 17A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & VIKRAM D. AMAR, FEDERAL PRACTICE AND PROCEDURE § 4248 (3d ed.), Westlaw (database updated Apr. 2023); *infra* Part II.B.1.

8. *See* Unif. Certification of Questions of L. Act § 3; 17A WRIGHT, MILLER & AMAR, *supra*, note 7, § 4248.

9. *See infra* Part III.

10. 912 F.3d 348 (6th Cir. 2018).

11. *See id.*

12. *Id.* at 354–55.

13. *See id.* at 355.

14. *Id.*; *see also* Lindenberg v. Jackson Nat'l Life Ins. Co., 147 F. Supp. 3d 694, 707–08 (W.D. Tenn. 2015), *aff'd* 912 F.3d 348 (6th Cir. 2018).

15. Ord., Lindenberg v. Jackson Nat'l Life Ins. Co, No. 13-CV-02657 (Tenn. June 23, 2016).

16. Lindenberg v. Jackson Nat'l Life Ins. Co., 919 F.3d 992, 995 (6th Cir. 2019) (Clay, J., concurring); *see also Lindenberg*, 912 F.3d at 363–70.

17. *Lindenberg*, 912 F.3d at 363–70.

"unpersuasive" and emphasizing its nonbinding nature.[18] Thus, because the Tennessee Supreme Court still has not addressed the question despite being given the opportunity to do so in *Lindenberg*, Tennessee state courts must continue to enforce the punitive damages cap, while Tennessee federal courts cannot. Plaintiffs seeking punitive damages in Tennessee therefore find themselves with a clear forum advantage if they choose to litigate in Tennessee federal court—the exact kind of inconsistency in the law that *Erie* sought to avoid.[19]

Lindenberg highlights at least three clear disadvantages that federal courts and litigants face when state high courts decline certified questions: (1) the risk of an incorrect *Erie* guess that creates inconsistent results in federal and state courts in the same state; (2) the potential for lengthy delays only to have the case returned back to federal court with difficult state law questions still unanswered; and (3) the resulting reluctance of federal courts to certify questions in the future when a state court declines. In addition, few states articulate the criteria that guide their exercises of discretion to reject certification requests, no state's certification scheme requires the state supreme court to explain the reasons for declining certified questions, and most jurisdictions do not impose a time limit for the state court's exercise of its discretion to accept or decline certification. These and other facets of modern certification practice often leave those seeking certification in the dark as to when and why a state court might decline certified questions and how to avoid a dreaded rejection by the state high court.

This Article seeks to provide guidance to federal courts and litigants who are seeking certification by enabling them to more accurately predict whether a state supreme court will accept certified questions, and also to formulate the questions and accompanying certification order to best position the case for acceptance. In addition, litigants opposing certification will also find it helpful to support an argument that certification should be declined in situations in which the case possesses one or more of the characteristics identified herein that make acceptance less likely. The Article will further assist state supreme courts in reducing the number of declined certified questions in their jurisdictions and prompt them to articulate the considerations underlying their decisions to decline when that exercise of discretion is appropriate. Finally, this Article presents proposed modifications to the Uniform Certification of Questions of Law Act (Uniform Act) and state certification schemes to remedy issues arising from declined certified questions for Uniform Law Commissioners and state legislators to consider and, hopefully, adopt.

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18. McClay v. Airport Mgmt. Servs., LLC, 596 S.W.3d 686, 693 n.6 (Tenn. 2020).

19. *See* Hanna v. Plumer, 380 U.S. 460, 468 (1965) (explaining that "the twin aims of the Erie rule" are "discouragement of forum-shopping and avoidance of inequitable administration of the laws"); Guar. Tr. Co. of N.Y. v. York, 326 U.S. 99, 109 (1945) ("The nub of the policy that underlies Erie R. Co. v. Tompkins is that for the same transaction the accident of a suit by a non-resident litigant in a federal court instead of in a State court a block away, should not lead to a substantially different result.").

Part I briefly recounts the development of certification in the United States and outlines the basics of the certification process under most states' certification schemes, which are generally modeled after the Uniform Act. Part II examines the standards, if any, beyond the requirements in the Uniform Act that guide both federal and state courts' exercise of their discretion in determining whether certification is appropriate, highlighting the dearth of state court authority in this area. Part II also discusses in more detail the difficulties that state court denials of certification requests create for federal courts and litigants. Part III then explores the certification practices of the courts of last resort in the three states that have most often declined certification requests during the last two decades: Ohio, Nevada, and Alabama. The Article reviews certification decisions in these jurisdictions from both a quantitative and a qualitative perspective and identifies common justifications that these state supreme courts have provided for their certification denials. Finally, Part IV proposes modifications to the Uniform Act to reduce the frequency of certification denials and provide increased guidance to federal courts and litigants in situations in which certified questions are declined.

I. CERTIFYING QUESTIONS TO STATE COURTS

The origin of certification can be traced to a 1945 Florida statute, an approving 1960 U.S. Supreme Court case, and a renewed emphasis on the procedure following another U.S. Supreme Court decision in 1974.[20] Since then, certification has achieved widespread adoption in American jurisprudence, with some variation across jurisdictions in its implementation.[21]

A. A Brief History of Certification

In 1945, the Florida legislature enacted House Bill No. 579, which provided as follows:

> [T]he Supreme Court of this state may, by rule of court, provide that, when it shall appear to the Supreme Court of the United States, to any Circuit Court of Appeals of the United States, or to the Court of Appeals of the District of Columbia, that there are involved in any proceeding before it questions or propositions of the laws of this state, which are determinative of the said cause, and there are no clear controlling precedents in the decisions of the Supreme Court of this state, such federal appellate court may certify such questions or propositions of the laws of this state to the Supreme Court of this state for instructions concerning such questions or propositions of state law, which certificate the Supreme Court of this state, by written opinion, may answer.[22]

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20. *See infra* Part I.A.

21. *See infra* Parts I.A–B.

22. Act of June 11, 1945, ch. 23098, 1945 Fla. Laws 1291 (codified at FLA. STAT. § 25.031 (2023)) (available at http://edocs.dlis.state.fl.us/fldocs/leg/actsflorida/1945/LOF1945V1GeneralLaws%20(Pt2).pdf).

However, although it was authorized to do so, the Supreme Court of Florida did not promulgate any rules of court creating such a certification procedure for over a decade.[23] Thus, although Florida law had laid the groundwork, federal-to-state court certification remained unused in Florida until the U.S. Supreme Court took notice of the certification statute fifteen years later.[24]

The 1960 U.S. Supreme Court case *Clay v. Sun Insurance Office Ltd.*[25] involved a claim under an insurance policy covering personal property.[26] The insured, John Clay, had purchased the policy in Illinois while he resided there, but he then moved to Florida, where the personal property losses occurred in February 1955.[27] The insurer denied coverage, and in May 1957, Clay filed suit in the U.S. District Court for the Southern District of Florida.[28] The insurer defended in part on the ground that the suit was barred by a provision in the policy requiring that any suit on a claim for loss be filed within twelve months of the insured's discovery of the loss.[29] Clay prevailed in the district court, which apparently concluded that the timing provision was invalid under a Florida statute that voided any contract provision that required filing suit within a shorter time period than the applicable statute of limitations in the state—five years for contract actions.[30] The U.S. Court of Appeals for the Fifth Circuit reversed, holding that due process prohibited application of the Florida statute to a contract the parties had entered into in Illinois.[31] In doing so, however, the Fifth Circuit bypassed the threshold question of whether the Florida statute applied to contracts entered out-of-state in the first place, instead resolving the case on constitutional grounds.[32]

Clay appealed to the U.S. Supreme Court, and Justice Felix Frankfurter's resulting opinion emphasized that, under "settled canons of constitutional adjudication," the Fifth Circuit should have first resolved the question of the Florida statute's applicability to out-of-state contracts before reaching the

23. *See In re* Fla. App. Rules, 127 So. 2d 444, 444–45 (Fla. 1961) (creating Florida court rule authorizing the Supreme Court of Florida to answer certified questions from federal courts); *see also* Clay v. Sun Ins. Off. Ltd., 363 U.S. 207, 212 n.3 (1960) (noting that the Supreme Court of Florida had not yet promulgated rules governing certifications). The U.S. Supreme Court indicated that it did not believe court rules were required for the Supreme Court of Florida to entertain a certification request. *See id.*

24. *See Clay*, 363 U.S. at 226 (Black, J., dissenting) ("[T]he best information obtainable is that the Supreme Court of Florida . . . evidently has never accepted such a certificate."); Philip B. Kurland, *Toward a Co-Operative Judicial Federalism: The Federal Court Abstention Doctrine*, 24 F.R.D. 481, 489 (1960) (explaining that the Florida certification statute "has never been utilized").

25. 363 U.S. 207 (1960).

26. *Id.* at 208.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 209 n.2.

31. *Id.* at 209; *see also* Sun Ins. Off. Ltd. v. Clay, 265 F.2d 522, 527 (5th Cir. 1959), *vacated*, 363 U.S. 207 (1960).

32. *Clay*, 363 U.S. at 209; *Clay*, 265 F.2d at 525.

due process issue.[33] Then, acknowledging that the Fifth Circuit indicated it could not make a confident *Erie* guess[34] on the issue given the available precedent, the Court pointed to the Florida certification statute as the solution: "The Florida Legislature, with rare foresight, has dealt with the problem of authoritatively determining unresolved state law involved in federal litigation by a statute which permits a federal court to certify such a doubtful question of state law to the Supreme Court of Florida for its decision."[35] The Court analogized the certification procedure to *Pullman*-type abstention,[36] which it had approved the use of in various prior cases to obtain a decision on an unsettled issue of state law that could moot or alter the posture of a federal constitutional question.[37] The U.S. Supreme Court and scholars have since recognized certification as a more efficient alternative to abstention.[38]

The dissenting opinions in *Clay* expressed some concerns with the use of the Florida certification procedure. Justice Hugo Black suggested that certification would result in state courts "deciding cases piecemeal" rather than "with complete records of cases in which they can enter final judgments" and criticized the Court's declining to decide the Florida law questions as an unnecessary and "exasperating delay."[39] Justice William O. Douglas shared concerns about "making litigants travel a long, expensive road to obtain justice" and ultimately attributed the desire to defer to state

33. *Clay*, 363 U.S. at 209.

34. *See* Erie R.R Co. v. Tompkins, 304 U.S. 64, 78 (1938); 19 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 4501 (3d ed.), Westlaw (database updated Aug. 2023) ("Stated in general terms, *Erie*'s core doctrine is that the substantive law to be applied in any federal case is state law, except when the matter before the court is governed by the United States Constitution, an Act of Congress, a treaty, international law, the domestic law of another country, or federal common law."); Frank Chang, Note, *You Have Not Because You Ask Not: Why Federal Courts Do Not Certify Questions of State Law to State Courts*, 85 GEO. WASH. L. REV. 251, 263 (2017) ("When state law is unclear or does not exist, federal courts are without a law to guide their decision. . . . To overcome this problem, federal courts generally ascertain the meaning of the unclear state law through either making an '*Erie*-guess' or certifying a question to the state supreme court.").

35. *Clay*, 363 U.S. at 212 (citing FLA. STAT. § 25.031 (1957)).

36. *See* 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4242 ("The usual situation for Pullman-type abstention is where the unclear issue of state law may make it unnecessary to decide a federal constitutional question.").

37. *Clay*, 363 U.S. at 212; Allegheny Cnty. v. Frank Mashuda Co., 360 U.S. 185, 189 (1959) (collecting cases in which the U.S. Supreme Court approved the use of *Pullman* abstention); *see also In re* Richards, 223 A.2d 827, 830 (Me. 1966) ("In fact the certification device is but a short step removed from and is a natural outgrowth of the practice of federal abstention . . . .").

38. *See, e.g.*, City of Houston v. Hill, 482 U.S. 451, 470 (1987) ("The certification procedure is useful in reducing the substantial burdens of cost and delay that abstention places on litigants."); Kurland, *supra* note 24, at 489–90 (explaining how certification addresses the "delay problem" created by federal court abstention); John B. Corr & Ira P. Robbins, *Interjurisdictional Certification and Choice of Law*, 41 VAND. L. REV. 411, 416–17 (1988) ("In many respects, certification is an outgrowth of the abstention era . . . . [C]ourts usually perceive certification as a better means of achieving the end for which abstention was fashioned.").

39. *Clay*, 363 U.S. at 226–27 (Black, J., dissenting).

courts to "prejudice against diversity jurisdiction."[40] Neither dissenter presaged widespread adoption or frequent use of certified questions by federal courts.[41]

In the years after *Clay*,[42] the U.S. Supreme Court continued to encourage the use of certification and even certified questions in cases involving unsettled issues of Florida law.[43] The Fifth Circuit (to which Florida belonged at the time) also made consistent use of the Florida certification procedure following the *Clay* decision,[44] and a handful of other states enacted certification statutes or court rules as well.[45] In 1967, the National Conference of Commissioners on Uniform State Laws approved the Uniform Act as a model for states wishing to allow certification.[46] However, despite the U.S. Supreme Court's enthusiasm for the procedure, certification did not gain a significant foothold among state courts until the 1970s, fueled by the U.S. Supreme Court's 1974 decision in *Lehman Brothers v. Schein.*[47]

In *Schein*, the U.S. Supreme Court vacated and remanded the judgment for the U.S. Court of Appeals for the Second Circuit to consider whether to certify questions of Florida law to the Supreme Court of Florida under the state's certification statute.[48] Although it emphasized that certification was not "obligatory" when state law was in doubt, the U.S. Supreme Court commended the procedure for, "in the long run[,] sav[ing] time, energy, and resources and help[ing] build a cooperative judicial federalism."[49] The U.S. Supreme Court further observed that certification "would seem particularly

40. *Id.* at 227–28 (Douglas, J., dissenting).

41. *See id.* at 213–27 (Black, J., dissenting); *id.* at 227–28 (Douglas, J., dissenting).

42. On remand, the Fifth Circuit did certify questions to the Supreme Court of Florida, which answered that the Florida statute voiding the insurance policy's timing provision applied to contracts entered out-of-state. *See* Sun Ins. Off., Ltd. v. Clay, 319 F.2d 505, 508 (5th Cir. 1963) (noting that the court had certified questions to the Florida high court), *vacated*, 377 U.S. 179 (1964); Sun Ins. Off., Ltd. v. Clay, 133 So. 2d 735, 738 (Fla. 1961). The case was eventually appealed to the U.S Supreme Court again, which found no constitutional concern with applying the Florida statute to Clay's policy. Clay v. Sun Ins. Off., Ltd., 377 U.S. 179, 183 (1964).

43. *See, e.g.*, England v. La. State Bd. of Med. Exam'rs, 375 U.S. 411, 433–34 (1964) (Douglas, J., concurring) ("Another alternative is for the District Court to follow the certificate route, when one is available . . . . We cannot require the States to provide such a procedure; but by asserting the independence of the federal courts and insisting on prompt adjudications we will encourage its use."); Aldrich v. Aldrich, 375 U.S. 249, 251–52 (1963) (certifying questions to Florida Supreme Court); Dresner v. City of Tallahassee, 375 U.S. 136, 138–39 (1963) (same).

44. *See, e.g.*, Green v. Am. Tobacco Co., 304 F.2d 70, 77 (5th Cir. 1962), *certified question answered*, 154 So. 2d 169 (Fla. 1963); Life Ins. Co. of Va. v. Shifflet, 370 F.2d 555, 556 (5th Cir. 1967); Trail Builders Supply Co. v. Reagan, 410 F.2d 763, 763 (5th Cir. 1969), *certified question answered*, 235 So. 2d 482 (Fla. 1970).

45. *See* Ira P. Robbins, *The Uniform Certification of Questions of Law Act: A Proposal for Reform*, 18 J. LEGIS. 127, 133 & n.44 (1992) (discussing states' adoption of certification procedures prior to Uniform Act).

46. *See* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1967); 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248; Robbins, *supra* note 45, at 128.

47. 416 U.S. 386 (1974); *see* 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248.

48. *Schein*, 416 U.S. at 391–92.

49. *Id.* at 390–91.

appropriate" in *Schein* "in view of the novelty of the question and the great unsettlement of Florida law" on the state law issue: whether Florida would hold a corporate officer who disclosed confidential earnings projections to outsiders liable under a theory of misappropriating corporate assets.[50] Although not expressly discussed in the decision, *Schein* also made clear that certification was available to address unsettled questions of state law in cases that did not involve constitutional issues, giving it broader usefulness than the related abstention doctrines.[51]

Today, forty-nine states[52] and the District of Columbia have established procedures allowing their courts of last resort to answer certified questions from federal courts.[53] Throughout this time, the U.S. Supreme Court has continued to approve of and strongly urge the use of certification, including recently in the 2020 case *McKesson v. Doe*,[54] in which the Court vacated and remanded to the Fifth Circuit because it should have used certification to obtain guidance on an unsettled issue of Louisiana tort law.[55]

B. The Certification Process

In general, state certification mechanisms are modeled after the Uniform Act—either as originally proposed in 1967 or as revised in 1995—which

50. *Id.* at 387–89, 391.

51. *See generally id. See also* 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248 (explaining that *Schein* "held that a federal court has discretion to use an available certification procedure even when the unclear issue of state law arises in a routine diversity case and raises no constitutional issue"); Richard Alan Chase, Note, *A State Court's Refusal to Answer Certified Questions: Are Inferences Permitted?*, 66 ST. JOHN'S L. REV. 407, 412–13 (1992) ("The certification process was first utilized as a means to avoid the delay and expense created by abstention, but its use has not been limited to situations in which abstention would be required.").

52. North Carolina is the holdout. *See* Eric Eisenberg, *A Divine Comity: Certification (at Last) in North Carolina*, 58 DUKE L.J. 69, 71 (2008) (attributing the state's hesitation to "North Carolina Supreme Court[] precedent [that] prohibits the General Assembly from enlarging the supreme court's jurisdiction even though no such limitation appears in the North Carolina Constitution's text," but ultimately arguing that certification can constitutionally be adopted in North Carolina).

53. *See* ALA. R. APP. P. 18; ALASKA R. APP. P. 407; ARIZ. REV. STAT. ANN. § 12-1861 (2024); ARK. SUP. CT. R. 6-8; CAL. R. CT. 8.548; COLO. APP. R. 21.1; CONN. GEN. STAT. § 51-199B (2023); DE. R. SUP. CT. 41; D.C. CODE § 11-723 (2023); FLA. R. APP. P. 9.150; GA. R. SUP. CT. 46; HAW. R. APP. P. 13; IDAHO APP. R. 12.3; ILL. R. SUP. CT. 20; IND. R. APP. P. 64; IOWA CODE § 684A.1 (2023); KAN. STAT. ANN. § 60-3201 (2023); KY. R. APP. P. 50; LA. SUP. CT. R. 12; ME. R. APP. P. 25; MD. CODE ANN., CTS. & JUD. PROC. § 12-603 (West 2023); MASS. R. SUP. JUD. CT. 1:03; MICH. CT. R. 7.308; MINN. STAT. § 480.065 (2023); MISS. R. APP. P. 20; MO. REV. STAT. § 477.004 (2023); MONT. R. APP. P. 15; NEB. REV. STAT. § 24-219 (2023); NEV. R. APP. P. 5; N.H. SUP. CT. R. 34; N.J. R. CT. 2:12A-1; N.M. STAT. ANN. § 39-7-4 (2023); N.Y. CT. R. 500.27; N.D. R. APP. P. 47; OHIO SUP. CT. PRAC. R. 9.01; OKLA. STAT. tit. 20, §§ 1601–1611 (2023); OR. REV. STAT. § 28.200 (2023); PA. R. APP. P. 3341; R.I. R. APP. P. 6; S.C. APP. CT. R. 244; S.D. CODIFIED LAWS § 15-24A-1 (2023); TENN. SUP. CT. R. 23; TEX. R. APP. P. 58.1; UTAH R. APP. P. 41; VT. R. APP. P. 14; VA. SUP. CT. R. 5:40; WASH. REV. CODE § 2.60.020 (2023); W. VA. CODE § 51-1A-3 (2023); WIS. STAT. § 821.01 (2023); WYO. R. APP. P. 11.01.

54. 141 S. Ct. 48 (2020).

55. *Id.* at 51.

itself is derived from the Florida certification statute.[56] The process begins in federal court with either a party's motion to certify a question to a state court of last resort or the federal court's decision to do so sua sponte.[57] Once it has decided to certify a question, the certifying court then makes its request by issuing a certification order to be forwarded to the state high court.[58] The certification order should set out the certified question of law and the facts necessary to provide appropriate context for the recipient state court in answering the question.[59]

A state statute or court rule in the recipient jurisdiction authorizes the state court of last resort to answer the certified question, generally under circumstances similar to those described in the Uniform Act:

> The [Supreme Court] of this State may answer a question of law certified to it by a court of the United States . . . if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision, or statute of this State.[60]

The state high court is also typically empowered to reformulate the question, an option intended to give the state court flexibility "in light of the justiciable controversy" but to discourage more significant amendments that may result in an advisory opinion.[61] Once the state court has answered the certified questions, the answers are binding on the federal court and the parties in resolving the case.[62]

State iterations of this power to answer certified questions vary,[63] including in the categories of federal courts whose questions may be answered, the degree to which the certified issue must be determinative of the case, and the scope of controlling authority that must be absent to warrant certification.[64] For example, as drafted, the 1995 Uniform Act permits certification requests from any federal court—all "court[s] of the United

56. *See* 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248. *Compare* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1967), *with* FLA. STAT. § 25.031 (2023).
57. *See* 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248.
58. Unif. Certification of Questions of L. Act § 5.
59. *See id.* § 6.
60. *Id.* § 3.
61. *Id.* § 4 & cmt.
62. *See* 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248.
63. *Id.*
64. Robbins, *supra* note 45, at 162–64; *see also* M. Bryan Schneider, *"But Answer Came There None": The Michigan Supreme Court and the Certified Question of State Law*, 41 WAYNE L. REV. 273 app. (1995) (table summarizing variations in state court certification schemes as of 1995).

States."[65] Although all states but one[66] with a certification mechanism permit questions from the U.S. Supreme Court,[67] many limit which other federal courts may certify questions. Some will accept questions only from the U.S. Supreme Court and circuit courts of appeals,[68] whereas others also permit certification by district courts.[69] Some also make certification available to bankruptcy courts or bankruptcy appellate panels.[70] And some jurisdictions impose even more specific limits, such as Illinois, which only permits certification by the U.S. Supreme Court or the U.S. Court of Appeals for the Seventh Circuit,[71] and Tennessee, which limits district and bankruptcy court certification requests to courts located in the state.[72]

In addition, some state certification schemes change the 1995 Uniform Act's requirement that the answer to the certified question "may be determinative of an issue in pending litigation in the certifying court."[73] Many jurisdictions retained the narrower requirement from the 1967 version of the Uniform Act that the question "may be determinative *of the cause* then pending in the certifying court."[74] Some states narrow this further by requiring that the answer to the certified question *must* be determinative of the action,[75] while at least one state significantly relaxes this standard by

65. Unif. Certification of Questions of L. Act § 3. The 1967 version of the Uniform Act instead listed specific federal courts: "the Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court, the United States Court of International Trade, the Judicial Panel on Multidistrict Litigation, the United States Claims Court, the United States Court of Military Appeals, the United States Tax Court . . . ." Unif. Certification of Questions of L. Act § 1 (Nat'l Conf. of Comm'rs on Unif. State L. 1967).

66. *See* N.J. R. CT. 2:12A-1 (permitting certification requests from the Third Circuit only).

67. 17A WRIGHT, MILLER & AMAR, *supra* note 7, § 4248. *See generally* note 53 and accompanying text.

68. *See, e.g.*, CAL. R. CT. 8.548; D.C. CODE § 11-723 (2023); FLA. R. APP. P. 9.150; MISS. R. APP. P. 20; N.Y. CT. R. 500.27; PA. R. APP. P. 3341; WIS. STAT. § 821.01 (2023); *see also* TEX. R. APP. P. 58.1 (permitting certification by "any federal appellate court").

69. *See, e.g.*, ARIZ. REV. STAT. ANN. § 12-1861 (2024); GA. R. SUP. CT. 46; HAW. R. APP. P. 13; IDAHO APP. R. 12.3; IND. R. APP. P. 64; IOWA CODE § 684A.1 (2023); KAN. STAT. ANN. § 60-3201 (2023); LA. SUP. CT. R. 12; ME. R. APP. P. 25; MASS. R. SUP. JUD. CT. 1:03; NEB. REV. STAT. § 24-219 (2023); N.H. SUP. CT. R. 34; N.D. R. APP. P. 47; R.I. R. APP. P. 6; S.D. CODIFIED LAWS § 15-24A-1 (2023); VA. SUP. CT. R. 5:40.

70. *See, e.g.*, ALASKA R. APP. P. 407; MO. REV. STAT. § 477.004 (2023); NEV. R. APP. P. 5; OR. REV. STAT. § 28.200 (2023).

71. ILL. R. SUP. CT. 20(a).

72. TENN. SUP. CT. R. 23.

73. Unif. Certification of Questions of L. Act § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1995).

74. Unif. Certification of Questions of L. Act § 1 (Nat'l Conf. of Comm'rs on Unif. State L. 1967) (emphasis added); *see, e.g.*, ALASKA R. APP. P. 407; ARIZ. REV. STAT. ANN. § 12-1861 (2024); ARK. SUP. CT. R. 6-8; D.C. CODE § 11-723 (2023); IOWA CODE § 684A.1 (2023); KAN. STAT. ANN. § 60-3201 (2023); MASS. R. SUP. JUD. CT. 1:03; NEB. REV. STAT. § 24-219 (2023); N.D. R. APP. P. 47; OR. REV. STAT. § 28.200 (2023); S.D. CODIFIED LAWS § 15-24A-1 (2023); WIS. STAT. § 821.01 (2023); *see also* CAL. R. CT. 8.548 (answer to certified question "could determine the outcome of a matter pending" in the certifying court).

75. *See, e.g.*, FLA. R. APP. P. 9.150; GA. R. SUP. CT. 46; HAW. R. APP. P. 13; IND. R. APP. P. 64; LA. SUP. CT. R. 12; N.Y. CT. R. 500.27; TENN. SUP. CT. R. 23; TEX. R. APP. P. 58.1; VA. SUP. CT. R. 5:40; *see also* IDAHO APP. R. 12.3 (certified question must be "a controlling question of law in the pending action"); MISS. R. APP. P. 20 (certified question must be "determinative of all or part of th[e] cause" before the certifying court); UTAH R. APP. P. 41

requiring only that the answer "may be *relevant* to the cause . . . ."[76] Still other jurisdictions replace the Uniform Act's "determinativeness" criterion with standards of their own for certified questions, such as that "there is an important and urgent reason for an immediate determination of" the certified question[77] or that "it is necessary to ascertain the local law of th[e] state in order to dispose of [the] proceeding."[78]

Jurisdictions also vary with respect to the authority that they consider in deciding whether the federal court lacks sufficient state court precedent to make a reasonable *Erie* guess. Although the 1995 Uniform Act requires that there be "no controlling appellate decision, constitutional provision, or statute" of the state for certification to be appropriate,[79] some states increase the potential opportunities for certification by requiring only a lack of controlling precedent from the court of last resort on the issue.[80] Many states retain the 1967 Uniform Act's consideration of both high court and intermediate appellate court precedent—but not state statutory or constitutional provisions—to determine whether an issue is unsettled.[81] Still other states inject a requirement for a lack of "clear" controlling precedent within the categories of authority considered.[82]

Despite these variations across jurisdictions, the Uniform Act's influence has resulted in certification procedures that generally resemble each other from state to state. Considering the key metrics of determinativeness and absence of controlling precedent, certification permits federal courts facing difficult state law questions to obtain definitive answers from the state court ultimately charged with interpreting state law.

(certified question must be "a controlling issue of law in a proceeding pending" before the certifying court). Wyoming pushes this requirement the furthest, declining to consider a certified question unless "there is nothing left for the trial court to do but apply our answer to the question or questions and enter judgment consistent with the answer . . . ." *In re* Certified Question from U.S. Dist. Ct., Dist. of Wyoming, 549 P.2d 1310, 1311 (Wyo. 1976).

76. MO. REV. STAT. § 477.004 (2023) (emphasis added).

77. DE. R. SUP. CT. 41.

78. WASH. REV. CODE § 2.60.020 (2023); *see also* MICH. CT. R. 7.308 (requiring "a question that Michigan law may resolve").

79. Unif. Certification of Questions of L. Act § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1995).

80. *See, e.g.*, ALASKA R. APP. P. 407; ARK. SUP. CT. R. 6-8; D.C. CODE § 11-723 (2023); FLA. R. APP. P. 9.150; IDAHO APP. R. 12.3; LA. SUP. CT. R. 12; MASS. R. SUP. JUD. CT. 1:03; MICH. CT. R. 7.308; MISS. R. APP. P. 20; NEB. REV. STAT. § 24-219 (2023); N.Y. CT. R. 500.27; N.D. R. APP. P. 47; S.D. CODIFIED LAWS § 15-24A-1 (2023); TENN. SUP. CT. R. 23; TEX. R. APP. P. 58.1.

81. Unif. Certification of Questions of L. Act § 1 (Nat'l Conf. of Comm'rs on Unif. State L. 1967); *see, e.g.*, ARIZ. REV. STAT. ANN. § 12-1861 (2024); KAN. STAT. ANN. § 60-3201 (2023); OR. REV. STAT. § 28.200 (2023); VA. SUP. CT. R. 5:40; WIS. STAT. § 821.01 (2023); *see also* IOWA CODE § 684A.1 (2023) (requiring "no controlling precedent in the decisions of the appellate courts of this state").

82. *See, e.g.*, GA. R. SUP. CT. 46; HAW. R. APP. P. 13; IND. R. APP. P. 64; VT. R. APP. P. 14; *see also* WASH. REV. CODE § 2.60.020 (2023) (requiring that "the local law has not been clearly determined").

II. DECLINING CERTIFICATION REQUESTS

One area in which state courts have remained uniform in their adoption of certification procedures is in allowing the state high court the discretion to decline questions that federal courts have certified.[83] As the Uniform Act puts it, the state high court "*may* answer" a certified question of law—it "retains the power to accept or reject a certified question so that it can control its docket . . . ."[84] This means that, even after deciding that a question is appropriate for certification under the Uniform Act's criteria, a federal court seeking help with a vexing issue of state law may be shown the door. Although most federal and some state courts have articulated the standards that they apply in determining whether certification is appropriate, many state courts have not discussed what guides their exercises of discretion to accept or decline certified questions. Coupled with other procedural aspects of state certification schemes that obscure state courts' reasoning for declining certification and delay ultimate resolution of the proceeding, state court rejections of certified questions are not decisions welcomed by litigants and federal courts.

A. Determining When Questions Are Appropriate for Certification

State high courts' discretion with respect to accepting certification requests creates a system in which two threshold determinations occur before the state court ultimately answers the question of law: (1) the federal court first decides whether to certify; and (2) the state supreme court then decides whether to accept or decline certification.[85] The starting point for both determinations is the criteria outlined in the Uniform Act—the question "may be determinative of an issue in pending litigation" and "there is no controlling appellate decision, constitutional provision, or statute of this State"—as modified by the certification rule in the state targeted for certification.[86] In addition, the U.S. Supreme Court has indicated that an issue is appropriate for certification if "there is doubt as to local law" and the issue is a "[n]ovel, unsettled question[] of state law."[87] The U.S. Supreme Court has further cautioned that a federal court should not certify a question when state law "is neither ambiguous nor obviously susceptible of a limiting construction" in an effort to prompt a state court to "rewrite a statute."[88]

1. Federal Court Criteria for Certifying Questions

Beyond this guidance from the U.S. Supreme Court, many federal circuit courts have articulated considerations in addition to those in the Uniform Act

83. Robbins, *supra* note 45, at 161. *See generally* note 53 and accompanying text.

84. Unif. Certification of Questions of L. Act § 3 & cmt. (Nat'l Conf. of Comm'rs on Unif. State L. 1995) (emphasis added).

85. *Id.* §§ 3, 5.

86. *See id.* § 3; *supra* Part I.B.

87. Lehman Bros. v. Schein, 416 U.S. 386, 390 (1974); Arizonans for Off. Eng. v. Arizona, 520 U.S. 43, 79 (1997).

88. City of Houston v. Hill, 482 U.S. 451, 471 (1987).

to guide the federal court inquiry into whether a question is appropriate for certification:

Circuit	Considerations for Whether to Certify
First	• "[T]he dollar amounts involved, the likely effects of a decision on future cases, and federalism interests . . . ."[89] • Whether "the answers to these questions may hinge on policy judgments best left to the [state] court . . . ."[90] • "[T]he importance and complexity of the questions presented in this case . . . ."[91]
Second	• "(1) [T]he absence of authoritative state court decisions; (2) the importance of the issue to the state; and (3) the capacity of certification to resolve the litigation."[92] • "[T]he age and urgency of the litigation, the impact that costs and delays associated with certification will have on the litigants, and the costs that delay imposes on other cases that depend on resolution of the legal issues."[93]
Fifth	• "(1) [T]he closeness of the question and the existence of sufficient sources of state law; (2) the degree to which considerations of comity are relevant in light of the particular issue and case to be decided; and (3) practical limitations of the certification process: significant delay and possible inability to frame the issue so as to produce a helpful response on the part of the state court."[94]

89. Phillips v. Equity Residential Mgmt., L.L.C., 844 F.3d 1, 7 (1st Cir. 2016) (quoting Easthampton Sav. Bank v. City of Springfield, 736 F.3d 46, 52 (1st Cir. 2013)).

90. De Prins v. Michaeles, 942 F.3d 521, 527 (1st Cir. 2019); *see also* Patel v. 7-Eleven, Inc., 8 F.4th 26, 29 (1st Cir. 2021) (certification appropriate because "there are unique policy interests at stake, specific to Massachusetts," and the case was "not a case in which the policy arguments line up solely behind one solution" (quoting *In re* Engage, Inc., 544 F.3d 50, 57 (1st Cir. 2008))).

91. *In re Engage*, 544 F.3d at 57.

92. Syeed v. Bloomberg L.P., 58 F.4th 64, 67–68 (2d Cir. 2023) (quoting O'Mara v. Town of Wappinger, 485 F.3d 693, 698 (2d Cir. 2007)); *see also* Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A., 51 F.4th 456, 474–75 (2d Cir. 2022) (considering "(1) whether the New York Court of Appeals has addressed the issue; (2) whether the questions are 'of importance to the state and may require value judgments and public policy choices;' and (3) whether the certified questions are 'determinative of a claim before us'" (quoting Barenboim v. Starbucks Corp., 698 F.3d 104, 109 (2d Cir. 2012))).

93. 10012 Holdings, Inc. v. Sentinel Ins. Co., Ltd., 21 F.4th 216, 224 (2d Cir. 2021); *see also Petróleos*, 51 F.4th at 474 (noting that the court must consider "whether the benefits of certification outweigh the disadvantages").

94. Goodrich v. United States, 3 F.4th 776, 781 (5th Cir. 2021).

Sixth	• Whether the question is "immensely important to a wide spectrum of state government activities."[95] • Whether "well-established principles exist to govern a decision" even though the state court has not addressed the exact question.[96]
Seventh	• "[W]hether the reviewing court finds itself genuinely uncertain about a question of state law that is vital to a correct disposition of the case."[97] • "[W]hether the case concerns a matter of vital public concern, the issue will likely recur in other cases, resolution of the question to be certified is outcome determinative of the case, and whether the state supreme court has yet to have an opportunity to illuminate a clear path on the issue."[98] • "[W]hether the supreme court of the state would consider the issue one of importance to the growth of the state's jurisprudence, whether resolution will benefit other future litigants, or whether intermediate courts of the state are in disagreement."[99]
Eighth	• "[W]hether the reviewing court finds itself genuinely uncertain about a question of state law" and whether the state law question is "close."[100] • Whether the court "find[s] no state law precedent on point" and whether "the public policy aims are conflicting."[101]

95. Kentucky Emps. Ret. Sys. v. Seven Cntys. Servs., Inc., 901 F.3d 718, 732 (6th Cir. 2018) (quoting Elkins v. Moreno, 435 U.S. 647, 662 n.16 (1978)).

96. Devereux v. Knox Cnty., 15 F.4th 388, 397–98 (6th Cir. 2021) (quoting State Auto Prop. & Cas. Ins. Co. v. Hargis, 785 F.3d 189, 194 (6th Cir. 2015)).

97. Brown v. Argosy Gaming Co., L.P., 384 F.3d 413, 415 (7th Cir. 2004) (quoting State Farm Mut. Auto. Ins. Co. v. Pate, 275 F.3d 666, 671 (7th Cir.2001)).

98. *Id.* at 416 (quoting *State Farm*, 275 F.3d at 671–73).

99. *Id.* ("On the flip side, a case is not a good candidate for certification where the case is fact-specific, where there is not much uncertainty regarding the issue in dispute, and where resolution of the question will not dispose of the case.").

100. Johnson v. John Deere Co., 935 F.2d 151, 153–54 (8th Cir. 1991) (quoting Tidler v. Eli Lilly & Co., 851 F.2d 418, 426 (D.C. Cir. 1988)).

101. Ideus v. Teva Pharms. USA, Inc., 986 F.3d 1098, 1104 (8th Cir. 2021) (Kelly, J., dissenting) (quoting Hatfield *ex rel.* Hatfield v. Bishop Clarkson Mem'l Hosp., 701 F.2d 1266, 1267 (8th Cir. 1983) (en banc)).

Ninth	• "(1) [W]hether the question presents 'important public policy ramifications' yet unresolved by the state court; (2) whether the issue is new, substantial, and of broad application; (3) the state court's caseload; and (4) the 'spirit of comity and federalism.'"[102] • Whether "the issues of law are not only unsettled but also have 'significant policy implications.'"[103]
Tenth	• Whether "the question before us (1) may be determinative of the case at hand and (2) is sufficiently novel that we feel uncomfortable attempting to decide it without further guidance."[104] • "[T]he importance of allowing the [state] Supreme Court to decide questions of state law and policy, and thus define state law."[105] • "[W]hether certification will conserve the time, energy, and resources of the parties as well as of the court itself."[106]
Eleventh	• Whether the court "ha[s] substantial doubt regarding the status of state law."[107] • "[T]he closeness of the question and the existence of sufficient sources of state law . . . to allow a principled rather than conjectural conclusion[,] the degree to which considerations of comity are relevant, and the practical limitations of the certification process . . . ."[108]
D.C.	• "[W]hen it appears that 'District of Columbia law is genuinely uncertain' and the questions are of 'extreme public importance.'"[109]

102. United States v. Francisco Gutierrez, 981 F.3d 660, 661 (9th Cir. 2020) (quoting Kremen v. Cohen, 325 F.3d 1035, 1037–38 (9th Cir. 2003)).

103. Cruz v. Spokane, 66 F.4th 1193, 1198 (9th Cir. 2023) (quoting Centurion Props. III, LLC v. Chi. Title Ins. Co., 793 F.3d 1087, 1089 (9th Cir. 2015)).

104. Nat'l Union Fire Ins. Co. of Pittsburgh v. Dish Network, LLC, 17 F.4th 22, 35 (10th Cir. 2021) (quoting Morgan v. Baker Hughes Inc., 947 F.3d 1251, 1258 (10th Cir. 2020)).

105. State Farm Mut. Auto. Ins. Co. v. Fisher, 609 F.3d 1051, 1058–59 (10th Cir. 2010).

106. Boyd Rosene & Assocs., Inc. v. Kan. Mun. Gas Agency, 178 F.3d 1363, 1365 (10th Cir. 1999).

107. Whiteside v. GEICO Indem. Co., 977 F.3d 1014, 1018 (11th Cir. 2020) (quoting Peoples Gas Sys. v. Posen Constr., Inc., 931 F.3d 1337, 1340 (11th Cir. 2019)); *see also In re* NRP Lease Holdings, LLC, 20 F.4th 746, 758 (11th Cir. 2021) (finding certification appropriate when federal court is "faced with substantial doubt on a dispositive state law issue" and "as a matter of federalism and comity").

108. Royal Cap. Dev., LLC v. Maryland Cas. Co., 659 F.3d 1050, 1055 (11th Cir. 2011) (second and fourth alterations in original) (quoting Florida *ex rel.* Shevin v. Exxon Corp., 526 F.2d 266, 274–75 (5th Cir. 1976)).

109. Akhmetshin v. Browder, 993 F.3d 922, 928 (D.C. Cir. 2021) (quoting Companhia Brasileira Carbureto de Calicio v. Applied Indus. Materials Corp., 640 F.3d 369, 373 (D.C. Cir. 2011)).

Several common concerns exist within these federal court certification standards: the closeness or importance of the question; federalism and comity interests; the impact on the parties' time and resources, including the potential for delay; the public policy implications of the questions for the state; and the likelihood that the issue will recur in future cases. And because federal courts have articulated these considerations for whether to certify, litigants seeking or opposing certification can frame their arguments to address the court's core concerns and also assess whether certification is likely to be granted or denied.

2. State Court Criteria for Whether to Accept or Decline Certification

With regard to the second threshold determination—the state high court's decision whether to accept certification—state courts have been less forthcoming regarding the principles guiding their decision-making. To be sure, some states do provide additional criteria for a certified question in their certification statutes or rules.[110] And others have relatively established standards for whether to accept certification set out by their high courts.[111] The majority, however, provide little explanation regarding the considerations for determining whether a certified question should be accepted or declined.[112]

Among the states that include additional criteria for "certifiable" questions in their state certification statutes or court rules are Idaho, Pennsylvania, Delaware, and California. Idaho, for example, will accept a certified question "unless [the Idaho Supreme Court] finds that it appears that there is another ground for determination of the case pending in the United States court, or that the question certified for adjudication under this rule is not clearly defined in the Order of Certification . . . ."[113] The Pennsylvania certification rule requires that "all facts material to the question of law to be determined are undisputed, and the question of law is one that the petitioning court has

110. *See, e.g.*, IDAHO APP. R. 12.3; PA. R. APP. P. 3341; DE. R. SUP. CT. 41; CAL. R. CT. 8.548.

111. *See, e.g.*, Longview Prod. Co. v. Dubberly, 99 S.W.3d 427, 429 (Ark. 2003); Schlieter v. Carlos, 775 P.2d 709, 713 (N.M. 1989); W. Helicopter Servs., Inc. v. Rogerson Aircraft Corp., 811 P.2d 627, 630 (Or. 1991).

112. *See, e.g.*, 69 A.L.R.6th 415, § 14 (2011) (citing decisions from only three state courts in surveying state court criteria for exercising their discretion to accept certification); Gregory L. Acquaviva, *The Certification of Unsettled Questions of State Law to State High Courts: The Third Circuit's Experience*, 115 PENN ST. L. REV. 377, 392–93 (2010) ("What [the New Jersey certification rule] does not provide, however, is any standard for what certified questions of law the Supreme Court of New Jersey will accept, other than noting that the question must be 'determinative' of the litigation. And . . . the Supreme Court has not enumerated any standards for acceptance or rejection of a certified question, leaving the federal judiciary and the bar to 'wonder not only when the Supreme Court [of New Jersey] will consider a question, but also exactly what factors influence that decision.'" (quoting James R. Zazzali & Adam N. Subervi, *Using Rule 2:12A to Certify Questions of Law*, 195 N.J. L.J. 375, 375 (2009))). *See generally* note 53 and accompanying text.

113. IDAHO APP. R. 12.3(c). The rule also allows the Idaho Supreme Court to decline certification if the certifying court has not made an adequate showing that the question qualifies under criteria similar to the requirements in the Uniform Act. *See id.*

not previously decided" for a certified question to be accepted.[114] In addition, the rule limits acceptance to cases in which there are "special and important reasons" for certification and includes a non-exhaustive list of such reasons, including that the "question of law is one of first impression," that "[t]he question of law is one with respect to which there are conflicting decisions in other courts," or that "[t]he question of law concerns an unsettled issue of the constitutionality, construction, or application of a [Pennsylvania] statute."[115] Delaware's certification rule has similar requirements for accepting certified questions and a nearly identical illustrative list of considerations.[116] Finally, California's court rule instructs the high court of that state that it may consider "whether resolution of the question is necessary to secure uniformity of decision or to settle an important question of law, and any other factor the court deems appropriate."[117]

Although not addressed in their certification statute or rule, the courts of last resort in Arkansas, New Mexico, and Oregon have articulated general considerations bearing on their decisions whether to accept or reject certification requests from federal courts. The Arkansas Supreme Court has adopted the same non-exhaustive list of considerations from the Pennsylvania certification rule, requiring "special and important reasons" for certification such as the "question of law is one of first impression" or "there are conflicting decisions in other courts."[118] The New Mexico high court requires that "the issue should present a significant question of law under the New Mexico Constitution or be one of such substantial public interest that it should be determined by this Court" and further considers "the degree of uncertainty in the law and prospects for judicial economy in the termination of litigation," weighed against "the advantages of normal appellate review."[119]

The most extensive set of criteria for accepting or rejecting certification comes from the Oregon Supreme Court, which has set out five statutory prerequisites to accepting certified questions derived from the state certification statute,[120] along with seven discretionary factors to be considered by the high court: (1) the court's "independent assessment of whether, in spite of the contrary opinion of the certifying court, there already is controlling Oregon precedent for the question certified"; (2) whether the case is a "*Pullman*-type abstention case[]" in which resolving the unsettled

114. PA. R. APP. P. 3341(c).
115. *Id.*
116. *See* DE. R. SUP. CT. 41.
117. CAL. R. CT. 8.548(f)(1).
118. Longview Prod. Co. v. Dubberly, 99 S.W.3d 427, 429 (Ark. 2003).
119. Schlieter v. Carlos, 775 P.2d 709, 713 (N.M. 1989).
120. W. Helicopter Servs., Inc. v. Rogerson Aircraft Corp., 811 P.2d 627, 630 (Or. 1991) ("[T]he certified question must meet five criteria created by the statute: (1) The certification must come from a designated court; (2) the question must be one of law; (3) the applicable law must be Oregon law; (4) the question must be one that 'may be determinative of the cause;' and (5) it must appear to the certifying court that there is no controlling precedent in the decisions of this court or the Oregon Court of Appeals." (quoting OR. REV. STAT. § 28.200 (2023))).

state law question may avoid the need to address a federal constitutional question; (3) considerations of federal-state comity; (4) the importance of the question and "decisional effect" of the answer to the certified question; (5) whether the certified questions "appear truly to be contested" such that the court will not issue an advisory opinion; (6) the procedural posture of the case, especially whether a pretrial order has been entered when a federal district court is the certifier; and (7) whether the question should be reframed or restated to "facilitate[e] a resolution of the actual question of law posed by the case."[121] The Oregon court will deny certification if one of the statutory criteria is missing, but if all are satisfied, it turns to the discretionary factors to further consider whether it should accept each of the questions certified.[122]

In the remaining states, litigants are, for the most part, left to scrutinize past acceptances and denials of certification requests to divine what motivates the state high court's decisions.

B. Difficulties in Cases in Which Certified Questions Are Declined

The lack of articulated standards among state courts guiding the decision whether to accept or decline certification makes it difficult for federal courts and litigants to predict when certified questions might be declined. And the ability to make this kind of prediction is critical given that the rejection of certified questions poses particular disadvantages for those seeking certification. These difficulties result from the relationship between certification and the *Erie* doctrine, as well as some of the procedural nuances in state certification schemes.

As federal courts have emphasized, a state court's declination of certified questions results in a forced *Erie* guess—a federal court that expressed a desire for state court guidance due to a *lack* of state court authority must now divine answers to its own questions from that same state precedent void.[123] In any case in which a federal court makes an *Erie* guess, whether or not in the certification posture, there is a risk that the federal court simply guesses wrong as to how the state supreme court would resolve the issue.[124] In cases

121. *Id.* at 631–34.

122. *See id.* at 631, 635–36.

123. *See, e.g.*, Jackson v. Johns-Manville Sales Corp., 781 F.2d 394, 397 (5th Cir. 1986) ("The denial of certification forces us to make the *Erie*-guess which we sought to avoid . . . ."); CSX Transp., Inc. v. City of Garden City, 325 F.3d 1236, 1239 (11th Cir. 2003) ("Where there is any doubt as to the application of state law, a federal court should certify the question to the state supreme court to avoid making unnecessary *Erie* 'guesses' . . . ." (quoting Mosher v. Speedstar Div. of AMCA Int'l, Inc., 52 F.3d 913, 916–17 (11th Cir. 1995))).

124. *See* John L. Watkins, *Erie Denied: How Federal Courts Decide Insurance Coverage Cases Differently and What to Do About It*, 21 CONN. INS. L.J. 455, 456 (2015) ("Federal courts periodically make incorrect '*Erie* guesses' of unsettled questions of state law as later determined by the state's highest court. In many instances, however, the state's highest court will not have the opportunity to correct the error because the issue never reaches it."); Haley N. Schaffer & David F. Herr, *Why Guess?:* Erie *Guesses and the Eighth Circuit*, 36 WM. MITCHELL L. REV. 1625, 1626 (2010) ("Understandably, federal courts might not accurately predict how a state high court would rule. The Eighth Circuit is not immune from this problem and has sometimes failed to correctly predict how state high courts will ultimately decide a question."); *see also* Cerda v. 2004-EQR1 L.L.C., 612 F.3d 781, 800 (5th Cir. 2010) (Haynes,

in which certification is declined, however, the risk of an incorrect *Erie* guess is higher because there must be a lack of controlling state court authority for the issue to be certifiable in the first instance.[125] Depending on the jurisdiction's variation of the Uniform Act criteria, there may be not only a lack of state supreme court authority, but also a lack of authority in intermediate appellate court decisions as well as statutory and constitutional sources, leaving the federal court with little to rely on in trying to predict what the state court would do.[126] Cases like *Lindenberg*, discussed above, illustrate that this concern is not hypothetical—federal courts can and do guess wrong under *Erie* following a declination of certified questions, leading to inconsistent results in federal and state courts on the same issue and generating a basis for forum shopping.[127]

Other difficulties in certification-denial cases derive from the state's certification scheme itself. Perhaps most significantly, no state certification scheme requires the court of last resort to explain why certification is being declined—in fact, some jurisdictions expressly exempt the state court from providing any reasons for its decision.[128] State supreme courts do sometimes provide detailed explanations for rejecting certification requests.[129] Often,

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J., concurring in part) ("The majority's decision . . . is an '*Erie* guess' that is just that: a guess.").

125. *See* Unif. Certification of Questions of L. Act § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1995) ("The [Supreme Court] of this State may answer a question certified to it . . . [if] there is no controlling appellate decision, constitutional provision, or statute of this State.").

126. *See supra* Part I.B.

127. *Compare* Lindenberg v. Jackson Nat'l Life Ins. Co., 912 F.3d 348, 370 (6th Cir. 2018), *with* McClay v. Airport Mgmt. Servs., LLC, 596 S.W.3d 686, 693 n.6 (Tenn. 2020). Another example involving an incorrect *Erie* guess following the rejection of certified questions is the Nevada case *GMAC Mortgage, LLC v. Nevada Ass'n Services*. 132 Nev. 972 (2016). There, after the Supreme Court of Nevada rescinded its acceptance of a certified question about the priority of homeowners' association liens in a foreclosure sale, the U.S. District Court for the District of Nevada stayed the case pending exhaustion of all appeals in another case in which the U.S. Court of Appeals for the Ninth Circuit had recently made an *Erie* guess on the same legal issue. *Id.*; GMAC Mortg., LLC v. Nev. Ass'n Servs., Inc., No. 13-CV-01157, 2016 WL 5329576, at *1 (D. Nev. Sept. 20, 2016). Once the appeals were exhausted, the District of Nevada resolved its stayed case (now called *Ditech Financial v. Nevada Ass'n Services* following a substitution of parties) under existing Ninth Circuit precedent, *Bourne Valley Court Trust v. Wells Fargo Bank*, 832 F.3d 1154 (9th Cir. 2016), and later entered judgment in favor of the plaintiff. Ditech Fin. v. Nev. Ass'n Servs., Inc., No. 13-CV-01157, 2018 WL 1413376, at *2 (D. Nev. Mar. 21, 2018); *see also* Final Judgment After Ord. Granting Summary Judgment, Ditech Fin. v. Nev. Ass'n Servs., Inc., No. 13-CV-01157 (D. Nev. Aug. 29, 2018). Five months after the *Ditech* opinion, the issue came before the Supreme Court of Nevada, which expressly declined to follow *Bourne Valley*, leaving the parties in *Ditech* bound by a federal court decision that was inconsistent with Nevada law. *See* SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon, 422 P.3d 1248, 1253 (Nev. 2018).

128. *See generally supra* note 53 and accompanying text. *See, e.g.*, VT. R. APP. P. 14 ("The Supreme Court may decline to answer any question certified to it without providing any reasons for its decision."); *see also* Unif. Certification of Questions of L. Act § 7 cmt. ("The receiving court, may, but is not obligated to, advise the certifying court of the reasons for a rejection.").

129. *See, e.g.*, Union Planters Bank, N.A. v. New York, 988 So. 2d 1007, 1010–11 (Ala. 2008); Mack v. Williams, 522 P.3d 434, 440–41 (Nev. 2022); Bradbury v. GMAC Mortg.,

however, the state court provides only a brief explanation for denying the certification request[130] or, even more confounding for federal courts and litigants, provides no explanation at all.[131]

In addition, some jurisdictions prohibit requests for reconsideration if the state supreme court rejects the certification request.[132] This limits parties' ability to raise questions about the considerations that influenced the state court's decision and to receive further detail or clarification from the court about its reasons for the denial—if any were given in the first place. And because no mechanism exists to appeal the rejection of a certified question by a state high court, the opportunities for litigants to gain insight into what kinds of certified questions the state court is likely to accept and deny are few and far between.

Compounding these issues are the delay and cost that the federal court and litigants risk if a question is certified to a state court of last resort but ultimately declined.[133] The Uniform Act directs the state high court to advise the certifying court of its acceptance or rejection of the certified questions and, if accepted, to *respond* to the questions "as soon as practicable."[134] However, consistent with the Uniform Act, most jurisdictions' certification procedures do not provide a timeframe for the state court to make the threshold decision of whether to accept or reject the certification request.[135] This creates the potential for certification requests to languish before the state court, only to be declined and returned to the federal court at the same stage as when they were certified. In addition, a few jurisdictions permit briefing or oral argument on the issue of whether the state court should accept or decline certification, requiring the parties to expend resources litigating this threshold issue that may result only in a cursory and unexplained relegation to federal court.[136] Several jurisdictions also expressly retain the power to

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LLC, 58 A.3d 1054, 1056–57 (Me. 2012); Keller v. City of Fremont, 790 N.W.2d 711, 711–13 (Neb. 2010); *see also infra* Part III.C.

130. *See, e.g.*, Dunn v. Ethicon, Inc., 835 N.E.2d 381 (Ohio 2005) (unpublished table decision); Hagen v. Siouxland Obstetrics & Gynecology, P.C., 849 N.W.2d 25 (Iowa 2014) (unpublished table decision); *In re* Certified Question from the U.S. Dist. Ct. W. Dist. of Michigan S. Div., 615 N.W.2d 250 (Mich. 2000); *see also infra* Parts III.B–C.

131. *See, e.g.*, Antioch Co. Litig. Tr. v. Morgan, 45 N.E.3d 242 (Ohio 2016) (unpublished table decision); *In re* Certified Question from the U.S. Ct. of Appeals for the Sixth Cir., 645 N.W.2d 657 (Mich. 2002); Sawyer v. Collins, 129 So. 3d 1004 (Ala. 2013); Knoepfler v. Guardian Life Ins. Co. of Am., 889 A.2d 1063 (N.J. 2005); *see also infra* Part III.B.

132. *See, e.g.*, ARIZ. SUP. CT. R. 27; KY. R. APP. P. 50; WYO. R. APP. P. 11.04.

133. *See* Jonathan Remy Nash, *Examining the Power of Federal Courts to Certify Questions of State Law*, 88 CORNELL L. REV. 1672, 1700 & n.108 (2003) (noting the "delay inherent in certification" and observing that "[t]he delay may be particularly nettlesome where the state court ultimately refuses to answer the certified question").

134. Unif. Certification of Questions of L. Act § 7 (Nat'l Conf. of Comm'rs on Unif. State L. 1995).

135. *See id. See generally supra* note 53 and accompanying text.

136. *See, e.g.*, DE. R. SUP. CT. 41 ("After docketing and *unless otherwise ordered*, this Court shall thereupon and without further argument determine whether to accept or refuse the certification." (emphasis added)); OR. R. APP. P. 12.20 ("In deciding whether to accept a certified question, the Supreme Court will not consider written argument from the parties or hold argument *unless it specifically directs otherwise*." (emphasis added)). *But see* PA. SUP.

rescind acceptance of certified questions, providing the opportunity for an even longer delay without progress toward resolving the case.[137]

C. The Impact of Certification Denials

These disadvantages of certification denials have prompted federal courts to comment on the undesirable effects of a state court's rejection of certified questions and express reluctance to certify in the future. For example, in the years after the renewed interest in certification fostered by *Schein*, the U.S. Court of Appeals for the Fourth Circuit conveyed its frustration following a certification denial by the Mississippi Supreme Court, viewing the decision as "an undesirable blow against the developing and potentially enormously helpful procedure under which certification of unresolved and important questions of state law may be referred to the court best equipped to provide answers to them."[138] And the Fifth Circuit characterized the Louisiana Supreme Court's denial of certification without explanation as a "cryptic, enigmatic response" to its "hopes for a surer, if not easier, answer" to difficult state law questions, while acknowledging that the state court's exercise of its discretion was proper.[139] In addition, the adoption of a certification scheme in Texas in 1986 led to a period of "strained . . . relations" between the Fifth Circuit and the Supreme Court of Texas due to the state court's "mysterious reluctance to accept questions of first impression" certified by the federal circuit court.[140] Federal courts have also identified concerns with delaying the proceeding, especially in jurisdictions in which certification denials are more common.[141] The Sixth Circuit, for example, has complained that "[i]f [its] requests for assistance are to be denied . . . the certification procedure is worse than useless, as it only further delays the lethargic movement of civil cases through the courts."[142] These comments suggest that, although they were not necessarily borne out in the use of certification as a whole, the *Clay* dissenters' concerns about unnecessary delay have come to fruition to some degree in cases in which the certified questions were declined by the state court of last resort.[143]

State courts have also recognized the potential fallout from declining certification, recognizing that such denials may be "baffling" to the certifying federal courts and urging that when a state supreme court is "asked to answer

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CT. INTERNAL OPERATING P. § 8(C) ("The Court shall decide whether to accept or decline certification without hearing oral argument.").

137. *See, e.g.*, ARK. SUP. CT. R. 6-8; S.C. APP. CT. R. 244; VA. SUP. CT. R. 5:40.

138. Jones *ex rel*. Jones v. Heckler, 754 F.2d 519, 520 (4th Cir. 1985).

139. Blanchard v. Engine & Gas Compressor Servs., Inc., 613 F.2d 65, 68 (5th Cir. 1980).

140. *See* James W. Paulsen & Gregory S. Coleman, *Civil Procedure*, 25 TEX. TECH L. REV. 509, 539–40 (1994) (quoting Jackson v. Freightliner Corp., No. 90-7092, slip op. 5171, 5174–75 (5th Cir. Aug. 7, 1991), *published as modified*, 938 F.2d 40 (5th Cir. 1991)).

141. *See, e.g.*, Lozada v. Dale Baker Oldsmobile, Inc., 145 F. Supp. 2d 878, 896 (W.D. Mich. 2001) ("[T]he court is reluctant to delay this action further by deferring trial in anticipation of the unlikely acceptance for certification by the Michigan Supreme Court.").

142. Knox v. Eli Lilly & Co., 592 F.2d 317, 319 (6th Cir. 1979).

143. *See* Clay v. Sun Ins. Off. Ltd., 363 U.S. 207, 226–27 (1960) (Black, J., dissenting); *id.* at 227–28 (Douglas, J., dissenting).

a certified question and the requirements of the rule are unquestionably met, [it] should simply answer the question."[144] Indeed, a justice on the Michigan Supreme Court identified myriad consequences of that court's refusals to answer certified questions:

> When this Court, as it now does, refuses to answer a question certified to it by a federal court, the following consequences arise: (a) we undermine the interests of the people of this state in having significant questions of Michigan law resolved by courts which are accountable to the people of this state; (b) we erode the sovereign interests of this state in retaining control over the interpretation of its own laws, and transfer such control to a lower court of a different sovereign; (c) we weaken our system of judicial federalism in which even in those cases in which a federal court must apply state law, the federal court is obligated to defer to state court interpretations of that law; (d) we place Michigan on an unequal footing with the majority of other states of the Union whose highest courts routinely respond to certified questions and which employ the certification process as one important means by which to maintain the sovereign institutions of their states; and (e) we fail to demonstrate comity and cooperation with a federal court, which is acting in these circumstances to show respect for the role of a state court in giving authoritative meaning to the laws of its own state.[145]

In addition, as the North Dakota Supreme Court observed, because litigants have no right to appeal the certification denial, declining certified questions from a federal court "leave[s] that court to speculate upon unsettled issues of [state] law, and the parties have no recourse in the appellate courts" of that state.[146]

Although these concerns with certification denials are significant, this Article does not suggest that they counsel an end to discretion on the state court side. State courts' ability to decline certification is an important facet of the procedural mechanism—it protects state high courts' ability to avoid issuing advisory opinions, permits them to exercise some control over how the law develops in the state, and serves as a docket-control device.[147] Instead, the drawbacks of certification denials suggest that federal courts and litigants seeking certification should be able to do so with as much guidance

144. Roberts v. Unimin Corp., No. CV-16-375, 2016 WL 3137853, at *2 (Ark. May 26, 2016) (Danielson, J., dissenting).

145. *In re* Certified Question from the U.S. Dist. Ct. for the Dist. of N.J., 795 N.W.2d 815, 816 (Mich. 2011) (Markman, J., dissenting).

146. Dominek v. Equinor Energy L.P., 982 N.W.2d 303, 308 (N.D. 2022) (first alteration in original) (quoting Mosser v. Denbury Res., Inc., 898 N.W.2d 406, 410 (N.D. 2017)).

147. *See* Ball v. Wilshire Ins. Co., 184 P.3d 463, 467 (Okla. 2007) ("The phrase indicating that a court 'may' answer questions determinative of the cause has been included in statutes similar to Oklahoma's to ensure that answers to certified questions do not result in merely advisory opinions."); Eley v. Pizza Hut of Am., Inc., 500 N.W.2d 61, 63 (Iowa 1993) ("The discretion to choose a more appropriate vehicle for developing our law has been cited by one authority as a strong reason for allowing discretion on the part of the answering court to deny answers to certified questions."); Unif. Certification of Questions of L. Act § 3 cmt. (Nat'l Conf. of Comm'rs on Unif. State L. 1995) ("[T]he receiving court retains the power to accept or reject a certified question so that it can control its docket . . . .").

as possible regarding what kinds of questions the state high court is likely to accept.

III. WHEN AND WHY STATE COURTS DECLINE CERTIFIED QUESTIONS: A STUDY

Given the lack of established state court standards for exercising their discretion to decline certification—and especially considering the risks that potential declination poses to federal courts and litigants—certification-seekers would benefit from further guidance regarding when and why state courts of last resort are likely to decline certified questions. This part aims to provide that additional guidance by exploring the certification practices of the three state courts that most frequently rejected certification requests between January 2000 and June 2023.[148] This study examines the frequency of denials in these jurisdictions and other related quantitative data, as well as analyzing common explanations given by these state courts for declining certification, when such an explanation is provided.

A. The Target Jurisdictions

Since 2000, the highest courts in the states of Ohio, Nevada, and Alabama have declined certification requests most often.[149] Each state's certification mechanism generally models one or both versions of the Uniform Act, with some variations.

1. Ohio

Ohio authorizes certification in the Supreme Court of Ohio Rules of Practice, Rule 9.01:

> The Supreme Court may answer a question of law certified to it by a court of the United States. This rule is invoked if the certifying court, in a proceeding before it, issues a certification order finding there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court.[150]

The Ohio rule combines elements of the 1967 and 1995 iterations of the Uniform Act, permitting certification by any federal court, but requiring the certified question to be potentially determinative of the entire case and

148. *See* Jason A. Cantone & Carly Giffin, *Certified Questions of State Law: An Empirical Examination of Use in Three U.S. Courts of Appeals*, 53 U. TOL. L. REV. 1, 36 (2021) ("We recommend that future research address certified question activity from the state supreme court side.").

149. This conclusion was derived from data collected from Westlaw using the following Boolean search terms: "(den! OR declin!) /s certif! /s question"; "certif! /s question!"; "certif!" narrowed by the terms "question" and "United States." Appropriate filters were applied to restrict results to the relevant courts and date range. The collected data was then supplemented with information available on each of the three states' supreme court dockets. The certification cases analyzed from each of the three jurisdictions are collected in the tables in the Appendix to this Article.

150. OHIO SUP. CT. PRAC. R. 9.01(A); *see also id.* 9.01–9.08.

limiting the controlling precedent inquiry to decisions of the Supreme Court of Ohio only.[151]

With respect to the state court's acceptance or rejection of the certified question, the Ohio certification scheme requires the parties to submit preliminary memoranda addressing the certified questions within twenty days after the certification order is filed in the Supreme Court of Ohio.[152] The court will "issue an order identifying the question or questions it will answer or decline to answer" based on a review of the memoranda, but the Ohio rule neither provides a time limit for the court to make this determination nor requires the court to set out its reasoning for accepting or rejecting the certified questions.[153] If any certified questions are accepted, the parties must then submit full briefs on the merits to the Supreme Court of Ohio under its normal briefing rules.[154] Beyond the Uniform Act requirements as modified by Ohio Rule 9.01, the certification rule provides no additional guidelines for whether the court will accept certification, and the Supreme Court of Ohio has not discussed its general considerations for this determination.[155]

2. Nevada

Nevada's certification procedure also appears in a court rule:

> The Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States or of the District of Columbia, a United States District Court, or a United States Bankruptcy Court when requested by the certifying court, if there are involved in any proceeding before those courts questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court or Court of Appeals of this state.[156]

Adopted in 1987, the rule largely tracks the 1967 version of the Uniform Act, requiring that certified questions be potentially determinative of the action as a whole and consulting both Supreme Court of Nevada and intermediate appellate court precedent in assessing whether any controlling prior decisions exist on the certified questions.[157] The Nevada rule does make an adjustment to the categories of federal courts it permits to certify questions, eliminating specialty federal courts like the U.S. Court of International Trade and the U.S. Tax Court, as well as the Judicial Panel on

151. *Compare id.* 9.01–9.08, *with* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1967), *and* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1995).

152. OHIO SUP. CT. PRAC. R. 9.05(A).

153. *Id.* 9.05(B).

154. *Id.* 9.07; *see id.* 16.01–16.10.

155. *See id.* 9.01–9.08.

156. NEV. R. APP. P. 5(a).

157. *Compare id.* 5*, with* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1967).

Multidistrict Litigation, and instead authorizing certification from bankruptcy courts.[158]

Regarding the Supreme Court of Nevada's discretion to accept or reject the certified questions, the rule specifies that the court will make this determination "without oral or written argument from the parties *unless otherwise directed by the Supreme Court*," thus permitting briefing and oral argument on this issue if the court desires it.[159] The rule does not provide any criteria to guide the court's decision to accept or reject certification beyond the Uniform Act requirements.[160] In applying these requirements, the Supreme Court of Nevada has explained that it construes them in a manner more akin to the 1995 Uniform Act's language: certification is appropriate when the answers to the certified questions "may 'be determinative' of *part of* the federal case . . . [and] there is no controlling . . . precedent."[161] The court also includes in its standard for accepting certified questions consideration of whether "the answer will help settle important questions of law."[162] However, the court has also recently articulated an approach more aligned with the 1967 Uniform Act and the text of Nevada Rules of Appellate Procedure, Rule 5: it will "decline to answer certified questions where [its] answers are '[in]sufficiently *outcome*-determinative to satisfy NRAP 5,' such as where 'Nevada law may [not] resolve the *case* . . . without need of further proceedings.'"[163] The Supreme Court of Nevada has not set out any other general considerations that impact its decision to accept or reject a certified question, although it has discussed its reasons for accepting or rejecting particular certified questions.[164]

3. Alabama

The Alabama certification scheme is based on express state constitutional authority,[165] as exercised in Alabama Rules of Appellate Procedure, Rule 18:

> When it shall appear to a court of the United States that there are involved in any proceeding before it questions or propositions of law of this State which are determinative of said cause and that there are no clear controlling precedents in the decisions of the Supreme Court of this State, such federal court may certify such questions or propositions of law of this State to the

158. *Compare* NEV. R. APP. P. 5(a)*, with* Unif. Certification of Questions of L. Act § 1.
159. NEV. R. APP. P. 5(g)(1) (emphasis added).
160. *See id.* 5.
161. Volvo Cars of N. Am., Inc. v. Ricci, 137 P.3d 1161, 1164 (Nev. 2006) (emphasis added) (quoting Ventura Group Ventures, Inc. v. Ventura Port Dist., 16 P.3d 717, 719 (Cal. 2001)); *see also* Unif. Certification of Questions of L. Act § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1995).
162. *Volvo*, 137 P.3d at 1164.
163. Mack v. Williams, 522 P.3d 434, 440 (Nev. 2022) (emphasis added) (second, third, and fourth modifications in original) (quoting Parsons v. Colts Mfg. Co., 499 P.3d 602, 606 (Nev. 2021)); *see also* Unif. Certification of Questions of L. Act § 1 (Nat'l Conf. of Comm'rs on Unif. State L. 1967).
164. *See infra* Parts III.B.2, C.
165. *See* ALA. CONST. art. VI, § 140(b)(3).

> Supreme Court of Alabama for instructions concerning such questions or propositions of state law, which certified question the Supreme Court of this State, by written opinion, may answer.[166]

Like the Ohio certification rule, the Alabama rule borrows aspects of both versions of the Uniform Act.[167] The Alabama rule adopts the 1995 Uniform Act's authorization of certification by any federal court, but it requires that the certified question must be determinative of the proceeding as in the 1967 Uniform Act.[168] It also limits the inquiry into whether controlling precedent exists to decisions of the Supreme Court of Alabama and adds the requirement that there be no *clear* controlling precedent from that court on the issue.[169]

The Alabama certification rule does not discuss the state court's exercise of discretion in whether to accept or deny certified questions, other than to confirm the existence of that discretion.[170] In practice, the Supreme Court of Alabama has likewise shed little light on what standards guide this determination, other than "general notions of comity," but it does frequently explain its reasoning when it declines certified questions in a particular case.[171]

B. Frequency of Declining Certified Questions and Related Data

In the decades since the adoption of certification procedures in most states, state high courts have accepted certified questions at varying rates. Specific data as to the frequency of accepting certification across jurisdictions is somewhat limited, but what is available indicates that some jurisdictions decline questions quite often—an important consideration for litigants in requesting certification and for federal courts in determining whether to certify.

For example, between the adoption of a certification procedure in Michigan in 1976 and November 1994, the Michigan Supreme Court declined to answer 57 percent of the questions certified to it by the Sixth Circuit and 69 percent of the questions certified to it by federal district courts in Michigan.[172] In contrast, between the adoption of certification in Kentucky in 1978 and 1995, the Kentucky Supreme Court declined one of five questions (20 percent) certified to it by the Sixth Circuit.[173] And the

166. ALA. R. APP. P. 18(a).

167. *Compare id.* 18, *with* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1967), *and* Unif. Certification of Questions of L. Act (Nat'l Conf. of Comm'rs on Unif. State L. 1995).

168. ALA. R. APP. P. 18(a); *see also* Unif. Certification of Questions of L. Act § 1 (Nat'l Conf. of Comm'rs on Unif. State L. 1967); Unif. Certification of Questions of L. Act § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1995).

169. ALA. R. APP. P. 18(a).

170. *Id.* ("[T]he Supreme Court of this State . . . *may* answer." (emphasis added)).

171. Palmore v. First Unum, 841 So. 2d 233, 236 n.3 (Ala. 2002); *see infra* Part III.B.3, C.

172. Schneider, *supra* note 64, at 316.

173. *Id.* at 322; *see also* KY. R. CIV. P. 76.37 (now KY. R. APP. P. 50).

Tennessee Supreme Court did not reject any certification requests between its adoption of certification in 1989 and 1995.[174]

More recently, a study of certification practices between 2010 and 2018 found that 80 percent of the questions certified by the U.S. Court of Appeals for the Ninth Circuit were accepted by the state high courts in that circuit, whereas 10 percent were declined (there was no federal docketing of state court action in the remaining 10 percent).[175] State high courts accepted 87 percent of the questions certified by the U.S. Court of Appeals for the Third Circuit during the same period, but they likewise rejected 10 percent (the remaining 3 percent lacked federal docketing of state action).[176] In contrast, although the Sixth Circuit certified fewer questions than the Third or Ninth Circuits between 2010 and 2018, only 60 percent were accepted by the state courts of last resort to which they were certified, whereas 30 percent were declined (there was no further information for the remaining 10 percent).[177]

Considering the data in the more recent empirical study, each of the three jurisdictions studied here declined certification at a significant rate between January 2000 and June 2023.[178] Review of the certification practices in these jurisdictions revealed some common characteristics among the cases in which certification was declined, as well as some unexpected differences.[179]

1. Ohio

Ohio's willingness to accept certified questions has varied widely in the years since the state adopted a certification procedure in 1988.[180] Between the adoption of certification in Ohio and 1995, the Supreme Court of Ohio declined to answer three out of the seven questions certified to it from the Sixth Circuit, or approximately 43 percent.[181] However, a study of the Supreme Court of Ohio's certification practices between July 1988 and December 2001 found that the court declined to answer ten out of the fifty-five questions certified to it during that lengthened period—a much lower rejection rate of 18 percent.[182]

The court's rejection rate has increased again in the recent decades considered in this study. The Supreme Court of Ohio disposed of eighty-four certification requests between January 2000 and June 2023, and it declined in whole or in part to answer thirty-two of them—approximately 38

174. Schneider, *supra* note 64, at 322; *see also* TENN. SUP. CT. R. 23.
175. Cantone & Giffin, *supra* note 148, at 36.
176. *Id.*
177. *Id.*
178. *See infra* Parts III.B.1–3.
179. The statistics in this part do not count as declinations cases in which the state court did not answer one or more certified questions only because they were mooted by questions that were answered.
180. *See* Rebecca A. Cochran, *Federal Court Certification of Questions of State Law to State Courts: A Theoretical and Empirical Study*, 29 J. LEGIS. 157, 162 (2003) (noting that certification began in Ohio on July 15, 1988).
181. Schneider, *supra* note 64, at 321.
182. Cochran, *supra* note 180, at 170.

percent.[183] Twenty-six of the eighty-four requests (31 percent) were declined in full, whereas the court declined one or more of the certified questions in six of the eighty-four requests (7 percent) while resolving the remaining questions.[184]

Perhaps unsurprisingly, the Supreme Court of Ohio was less likely to reject certification requests from circuit courts and bankruptcy appellate panels. The court received twelve certifications from the Sixth Circuit, and it declined three (25 percent), all in their entirety.[185] The Sixth Circuit Bankruptcy Appellate Panel certified questions five times, and the high court rejected only one certification (20 percent).[186] In contrast, out of the sixty-three federal district court certifications that the Supreme Court of Ohio received, it rejected twenty-five in whole or in part (40 percent).[187] The state high court also rejected in full three out of the four certification requests (75 percent) that it received from bankruptcy courts.[188]

The most common categories of substantive issues certified to the Supreme Court of Ohio between January 2000 and June 2023 were state statutory interpretation, insurance law, state constitutional law, tort law, property law, criminal law and procedure, and employment law.[189] During that time, the Supreme Court of Ohio more frequently rejected certifications involving insurance and state constitutional law than those involving other issues. Out of the twenty-two certifications that it received raising insurance law issues, the state high court declined twelve in whole or in part (55 percent).[190] And the court rejected in whole or in part nine out of the nineteen certifications involving questions of state constitutional law (47 percent).[191] The court was somewhat more receptive to issues of state statutory interpretation or tort law. As for state statutory interpretation, the Supreme Court of Ohio declined twelve certifications in whole or in part out of thirty-six requests (33 percent).[192] The court received fifteen certifications related to tort law issues during the relevant time period, and it declined five cases (33 percent), four in their entirety and one in part.[193] But the Supreme Court of Ohio was most likely to accept certification in employment, property, and criminal law and procedure cases. In employment cases, the court received four certification requests and only declined one in part (25 percent).[194] The court declined two out of twelve certifications raising

183. *See* Appendix, Table 1. All percentages in this Article have been rounded to the nearest whole number.
184. *See id.*
185. *See id.*
186. *See id.*
187. *See id.*
188. *See id.*
189. *See id.*
190. *See id.*
191. *See id.*
192. *See id.*
193. *See id.*
194. *See id.*

property issues (17 percent) and both declinations were in their entirety.[195] And out of seven criminal law and procedure certifications, the court declined only one (14 percent).[196]

The Supreme Court of Ohio rarely explained why it declined a certification request in full. Out of twenty-six certification requests that the court declined in their entirety, it stated reasons for declining in only four cases (15 percent).[197] In partial declination cases, however, the court was more forthcoming, providing at least a brief explanation of its refusal to answer questions four out of six times (67 percent).[198] The court's reasoning for declining certification requests will be explored in Part III.C.

2. Nevada

Between January 2000 and June 2023, the Supreme Court of Nevada disposed of seventy-seven certification requests from federal courts.[199] The court declined approximately 38 percent of those requests either in whole or in part—it declined altogether to answer twenty out of the seventy-seven certification requests (26 percent), and it declined to answer at least one of the certified questions in nine out of the seventy-seven requests (12 percent) while answering the remaining questions.[200]

Like its Ohio counterpart, the Supreme Court of Nevada was less likely to reject a certification request from a federal circuit court or bankruptcy appellate panel than from a federal district or bankruptcy court. The court declined in whole or in part seven out of seventeen certifications (41 percent) from bankruptcy courts and twenty out of forty-one certifications (49 percent) from district courts.[201] However, the court declined in whole or in part only two out of eighteen certifications (11 percent) from circuit courts, and it accepted the only certification request it received from a bankruptcy appellate panel.[202] Of the circuit court declinations, only one rejected certification in its entirety; the other rejected just one of the certified questions.[203]

The Supreme Court of Nevada's acceptance of certified questions also varied based on the substantive legal issues involved. The most common issues involved in certification requests were questions of state statutory interpretation, property law, tort law, insurance law, state constitutional law, and contract law.[204] Between January 2000 and June 2023, federal courts certified questions to the state high court in thirty-four cases involving property issues, and the state court declined nineteen (56 percent) in whole

195. *See id.*
196. *See id.*
197. *See id.*
198. *See id.*
199. *See* Appendix, Table 2.
200. *See id.*
201. *See id.*
202. *See id.*
203. *See id.*
204. *See id.*

or in part.[205] The Supreme Court of Nevada also declined state statutory interpretation issues relatively frequently, refusing the certification request in whole or in part in nineteen out of the thirty-seven cases (51 percent) certified to it.[206] Ranking higher in terms of likelihood of acceptance were state constitutional, tort, and insurance cases. Out of the four state constitutional law cases certified to it, the Supreme Court of Nevada exercised its discretion to decline questions in one case (25 percent), and it only declined some of the certified questions.[207] Similarly, the court declined three out of the twelve certification requests (25 percent) involving insurance issues, but two were only partial declinations.[208] And although the court declined three out of fourteen certifications that involved tort law issues (21 percent), two were declined only in part.[209] The lowest declination rate came in the category of contracts, as the court declined only one of the six contracts-related certifications (17 percent) that it received during the relevant time period.[210]

In contrast to Ohio, the Supreme Court of Nevada provided at least a brief explanation of its reasons for declining certification requests in every one of the declination cases.[211] These explanations will be discussed in Part III.C.

3. Alabama

The Supreme Court of Alabama disposed of seventy-nine requests for certification between January 2000 and June 2023, and the court declined twenty-eight of the requests (35 percent) in whole or in part.[212] The court declined twenty-three of the requests (29 percent) in their entirety, whereas it declined five (6 percent) only in part and answered the remaining questions.[213]

Unlike in the other states discussed, the Supreme Court of Alabama was not necessarily more likely to accept a certification request from a circuit court or bankruptcy appellate panel, although it still had a relatively high rate of rejection for certifications from federal district and bankruptcy courts. A federal circuit court certified questions to the Supreme Court of Alabama twenty-one times, and the state court declined nine of the requests (43 percent) in whole or in part.[214] The court accepted the only bankruptcy appellate panel certification that it received during the same period.[215] Of the fifty-two certification requests that the state high court received from federal district courts, it declined seventeen (33 percent) in whole or in

205. *See id.*
206. *See id.*
207. *See id.*
208. *See id.*
209. *See id.*
210. *See id.*
211. *See id.*
212. *See* Appendix, Table 3.
213. *See id.*
214. *See id.*
215. *See id.*

part.[216] And the Supreme Court of Alabama declined two of the five certification requests (40 percent) that it received from bankruptcy courts.[217]

Certification request rejections in Alabama also varied by substantive issue. The Supreme Court of Alabama most often received certified questions raising issues of state statutory interpretation, tort law, insurance law, contract law or Uniform Commercial Code (UCC) issues, state civil procedure, property law, and employment law.[218] Although the Supreme Court of Alabama received only six certifications on property issues during the relevant time period, it declined to answer four of them (67 percent) either in their entirety or in part.[219] And the court rejected in its entirety one of the two state constitutional law certification requests (50 percent) that it received during that time.[220] The Supreme Court of Alabama also rejected certification based on state procedural issues somewhat frequently, as it received six certification requests and declined two in their entirety (33 percent).[221] The Supreme Court of Alabama was more receptive to cases certifying questions of tort law, state statutory interpretation, or insurance law. Questions of tort law arose in sixteen certification requests, but the court exercised its discretion to decline only three in whole or in part (19 percent).[222] In state statutory interpretation cases, the court declined three out of twenty requests (15 percent) from federal courts, all in their entirety.[223] The Supreme Court of Alabama received fifteen certification requests involving insurance issues, and it declined only two (13 percent), both in their entirety.[224] Finally, cases involving contract or UCC issues or issues of employment law were most likely to garner a certification acceptance. The Supreme Court of Alabama did not decline any of the nine certifications that it received raising questions under contract law or the UCC.[225] Similarly, four employment-related certifications came before the Supreme Court of Alabama, and it did not decline any of them.[226]

The Supreme Court of Alabama provided its reasons for declining certification requests in their entirety in six out of twenty-three cases (26 percent) between January 2000 and June 2023.[227] In contrast, in partial declination cases, the court explained the reasons for declination all five times. Part III.C. discusses the court's explanations alongside those given by the high courts in the other two jurisdictions.

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216. *See id.*
217. *See id.*
218. *See id.* As Table 3 indicates, the substantive topic of the certification request was not available for some cases, so the conclusions in this paragraph are derived from the cases for which the substantive issue was discernable.
219. *See id.*
220. *See id.*
221. *See id.*
222. *See id.*
223. *See id.*
224. *See id.*
225. *See id.*
226. *See id.*
227. *See id.*

4. Key Takeaways

The quantitative analysis above yields a number of observations about certification practices in these states where declining certified questions occurs frequently. As the following table illustrates, all three jurisdictions had relatively high rates of declination, and all three state supreme courts rejected certification requests in their entirety more often than they issued partial rejections while accepting other certified questions.[228]

Overall Declination Rates

	Ohio (84 cases)	**Nevada (77 cases)**	**Alabama (79 cases)**
Declined in Full	31%	26%	29%
Declined in Part	7%	12%	6%
Total	38%	38%	35%

In addition, the three state supreme courts were generally more likely to accept certified questions from circuit courts of appeals and bankruptcy appellate panels than from lower-level federal courts, as shown in the table below.[229]

Declination Rates by Certifying Court

	Ohio	**Nevada**	**Alabama**
Circuit court	25%	11%	43%
Bankruptcy appellate panel	20%	0%	0%
District court	40%	49%	33%
Bankruptcy court	75%	41%	40%

228. *See* Appendix, Tables 1–3.
229. *See id.*

The Alabama data differs to some degree in this category, as that state court did have a notably higher rate of rejection for circuit court certifications than the other two jurisdictions.[230] However, all three state high courts were receptive to certification from bankruptcy appellate panels.[231] In contrast, the rate of rejection for certified questions from bankruptcy courts was greater than the overall rejection rate for certifications in all three states, and the rate of rejection for district court certifications was greater than the overall rejection rate in Ohio and Nevada.[232] This indicates that, in general, a state supreme court is less likely to accept certification from these lower federal courts than from other Article III tribunals.

Study of the substantive issues certified in each state produced fewer insights than anticipated. State statutory interpretation was the most common substantive category for certified questions in all three jurisdictions, and issues of tort, insurance, and property law were certified frequently as well.[233] However, the rate at which each jurisdiction declined cases in each substantive category varied widely, as the table below illustrates.

Declination Rates by Substantive Issue

	Ohio	**Nevada**	**Alabama**
Insurance	55%	25%	13%
Property	17%	56%	67%
State constitutional law	47%	25%	50%
State statutory interpretation	33%	51%	15%
Torts	33%	21%	19%

Whereas Nevada was generally willing to answer certified questions involving state constitutional issues, Ohio and Alabama were much less receptive.[234] In contrast, Alabama was most willing of the three jurisdictions to address certified questions involving state statutory interpretation, followed at some distance by Ohio, whereas Nevada declined certification in

230. *See id.*
231. *See id.*
232. *See id.*
233. *See id.*
234. *See id.*

just over half of the approximately three dozen state statutory interpretation cases that it received.[235] The same phenomenon occurred across tort, insurance, and property cases. Ohio demonstrated a general willingness to answer property questions, but it was not particularly receptive to tort questions, and it was more likely to decline an insurance question than to accept it.[236] Nevada, on the other hand, was more likely to decline property questions but generally willing to accept tort and insurance certifications.[237] Alabama followed a somewhat similar paradigm: it was the least likely to answer a property question on certification, but it was relatively receptive to tort questions and generally amenable to addressing insurance issues.[238] These findings indicate that the considerations impacting the state high court's decision whether to accept certification do not necessarily fall along substantive lines—and perhaps also that these jurisdictions vary regarding the importance that they ascribe to resolving unsettled law across these substantive categories.

When it came to explaining their decisions to decline certification, the Nevada Supreme Court routinely set out its reasoning, whereas the Ohio and Alabama high courts often withheld an explanation, as seen in the table below.[239]

Frequency of Explaining Declinations

	Ohio	**Nevada**	**Alabama**
Declined in full	15%	100%	26%
Declined in part	67%	100%	100%

When the Ohio and Alabama courts did provide the basis for their decisions, they did so more frequently in cases in which they declined only some of the certified questions than in cases in which certification was wholly declined.[240] Thus, federal courts and parties may have an increased chance of receiving the court's reasoning for declining certification in cases in which the court chooses to answer some but not all of the certified questions.

C. Why Certified Questions Were Declined

In light of the frequency of denying certification requests in the selected jurisdictions, and especially the lack of uniformity regarding the substantive

235. *See id.*
236. *See* Appendix, Table 1.
237. *See* Appendix, Table 2.
238. *See* Appendix, Table 3.
239. *See* Appendix, Tables 1–3.
240. *See* Appendix, Tables 1, 3.

issues likely to be declined, exploring the reasons for which the state courts in the target jurisdictions rejected certification requests may shed additional light on the considerations guiding this exercise of discretion. Because Ohio, Nevada, and Alabama each modeled their certification schemes on the Uniform Act,[241] the state supreme courts' discussions of their reasons for declining certification requests occur within the framework of the Uniform Act's criteria for when certification is appropriate. Thus, in a typical case, ostensibly the state high court's explanation for rejecting the certified questions is that the questions failed to meet either the determinativeness requirement or the lack of controlling precedent requirement of the state's certification rule (or both) in some way.[242]

Of course, having been certified to the state supreme court in the first instance, the issues in each of the declined cases had already been found to *satisfy* those same Uniform Act criteria by an able federal court. In some cases, the state high court appears to have simply viewed the legal issues or existing precedent differently than the federal court; reasonable minds disagreed as to whether the Uniform Act criteria were met.[243] In other cases, however, although grounded in the determinativeness or controlling-authority criteria, the reasoning that the court set out suggested other concerns underlying the rejection of certification as well.[244] This provides an answer to the question that prompted this Article: what, beyond the Uniform Act criteria, might influence a state supreme court to deny certification? Further study and comparison of the certification denials in the three target jurisdictions revealed several recurring justifications that the state high courts relied on to decline certification.

1. Although Controlling Precedent Did Not Exist When the Federal Court Certified the Question, It Exists Now

Two sets of Nevada cases—referred to here as the *SFR* set and the *K&P* set—best illustrate this category. The former is a set of seven certification requests before the Supreme Court of Nevada in 2014 that involved substantially the same legal issues as an appeal already pending before that

241. *See supra* Part III.A.

242. *See generally* Appendix, Tables 1–3.

243. *See, e.g.*, U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC, 489 P.3d 514, 514 (Nev. 2021) (unpublished table decision) ("Having considered the questions and the Ninth Circuit's certification order, we are not persuaded that there is a lack of controlling precedent or that any answers would help settle important questions of law."); Livelife, LLC v. Bay Point Cap. Partners, LP, 486 P.3d 1290 (Nev. 2021) (unpublished table decision) ("Having considered this question, the Bankruptcy Court's certification order, and the documents submitted in conjunction with the order, we are not persuaded that answering the certified question will necessarily be determinative of the dispute between appellant LiveLife and respondent Bay Point."); Dunn v. Ethicon, Inc., 835 N.E.2d 381, 381 (Ohio 2005) ("The court declines to answer the certified question because the applicable law is settled in Ohio.").

244. Some of these are likely political and other considerations that, because they are not explicitly addressed by the state supreme court, cannot be articulated in an objective way.

court, *SFR Investments Pool 1 LLC v. U.S. Bank*.[245] The latter set is similar: a set of four certification requests before the Supreme Court of Nevada in 2017 that involved essentially the same legal issues as *K&P Homes v. Christiana Trust*,[246] another already-pending request for certification.[247] In both sets of cases, although the certification requests were filed *before* the Supreme Court of Nevada resolved *SFR* and *K&P*, the court declined certification after it issued its decisions in those cases.[248] Thus, although no controlling precedent existed when the federal court determined that the corresponding Nevada Rule of Appellate Procedure 5 criterion was satisfied for each certification request, the Supreme Court of Nevada could justifiably decline certification due to existing controlling precedent by the time it made the decision to do so.

Two other declined cases in Nevada involved similar procedural circumstances. In the first, *Guinn v. Federal Deposit Insurance Corp.*,[249] the Supreme Court of Nevada declined two of the certified questions on the ground that they were resolved by existing Nevada precedent, citing its recent decision on petition for rehearing in *Lavi v. Eighth Judicial District Court*.[250] *Lavi* was pending before the state high court at the time when the *Guinn*

245. 334 P.3d 408 (Nev. 2014); *see also* RLP-Vervain Ct., LLC v. Wells Fargo, 130 Nev. 1236 (2014) (unpublished table decision); Eagle Invs. v. Bank of Am., N.A., 130 Nev. 1173 (2014) (unpublished table decision); Bank of Am., N.A. v. Platinum Realty & Holdings, LLC, 130 Nev. 1151 (2014); Platinum Realty & Holdings, LLC v. Wells Fargo, 130 Nev. 1230 (2014) (unpublished table decision); Kal-Mor-USA, LLC v. Bank of Am., N.A., 130 Nev. 1203 (2014); Bank of Am., N.A. v. One Queensridge Place Homeowners' Ass'n, Inc., 130 Nev. 1151 (2014) (unpublished table decision); Park *ex rel*. Ray v. U.S. Bank, NA, 130 Nev. 1227 (2014) (unpublished table decision).

246. 398 P.3d 292 (Nev. 2017).

247. *See* 2014-3 IH Borrower, LP v. Las Vegas Dev. Grp., LLC, 401 P.3d 213 (Nev. 2017) (unpublished table decision); Eagle Invs. v. Bank of Am., N.A., 401 P.3d 213 (Nev. 2017) (unpublished table decision); Residential Credit Sols. v. Kal-Mor-USA, LLC, 401 P.3d 213 (Nev. 2017) (unpublished table decision); U.S. Bank *ex rel* GSAA Home Equity Tr. 2006-9 v. Diamond Creek Homeowners Ass'n, 401 P.3d 212 (Nev. 2017) (unpublished table decision).

248. *SFR* set: *Compare* Ord. Certifying Question to Nev. Sup. Ct., *RLP-Vervain Ct.*, 130 Nev. 1236 (No. 65255) (filed Mar. 21, 2014), Ord. Certifying Question to Nev. Sup. Ct., *Eagle Invs.*, 130 Nev. 1173 (No. 65258) (filed Mar. 21, 2014), Ord. Certifying Question to Nev. Sup. Ct., *Bank of Am., N.A.*, 130 Nev. 1151 (No. 65252) (filed Mar. 17, 2014), Ord. Certifying Question to Nev. Sup. Ct., *Wells Fargo*, 130 Nev. 1230 (No. 65256) (filed Mar. 17, 2014), Ord. Certifying Question to Nev. Sup. Ct., *Kal-Mor-USA*, 130 Nev. 1203 (No. 65253) (filed Mar. 17, 2014), Ord. Certifying Question to Nev. Sup. Ct., *One Queensridge Place Homeowners' Ass'n*, 130 Nev. 1151 (No. 65254) (filed Mar. 17, 2014), *and* Ord. Certifying Question to Nev. Sup. Ct., *Park*, 130 Nev. 1227 (No. 65248) (filed Mar. 21, 2014), *with SFR*, 334 P.3d 408 (decided Sept. 18, 2014), *and supra* note 245 and accompanying text (certification declined in all cases on Dec. 5, 2014).
K&P set: *Compare* Ord. Certifying Question to Nev. Sup. Ct., *2014-3 IH Borrower*, 401 P.3d 213 (No. 70730) (filed July 6, 2016), Ord. Certifying Question to Nev. Sup. Ct., *Eagle Invs.*, 401 P.3d 213 (No. 70740) (filed July 7, 2016), Ord. Certifying Question to Nev. Sup. Ct., *Residential Credit Sols.*, 401 P.3d 213 (No. 70924) (filed Aug. 2, 2016), *and* Ord. Certifying Question to Nev. Sup. Ct., *Diamond Creek Homeowners Ass'n*, 401 P.3d 212 (No. 72308) (filed Feb. 7, 2017), *with K&P Homes*, 398 P.3d 292 (decided July 27, 2017), *and supra* note 247 and accompanying text (certification declined in all cases on Sept. 11, 2017).

249. 130 Nev. 1184 (2014) (unpublished table decision).

250. 325 P.3d 1265 (Nev. 2014).

certification request was filed, and the Supreme Court of Nevada only declined certification after the issuance of the decision in *Lavi*.[251] This created the same situation in which the federal court lacked controlling precedent when it certified the questions, but the state high court had controlling precedent to refer the federal court to as a basis for declination. However, unlike the cases discussed above, the decision in *Lavi* only directly resolved one of the three certified questions in *Guinn*—the first question, which involved the proper procedure to obtain a deficiency judgment for a commercial loan under a Nevada statute.[252] The second question involved application of the principles set out in *Lavi* to the specific facts of *Guinn*, so the court's referring the federal court to *Lavi* was an implicit instruction to use the new precedent to make an *Erie* guess.[253] The court declined the third certified question for different reasons, discussed below.[254]

The Supreme Court of Nevada also declined a certified question based on controlling precedent it issued while the certification request was pending in *Nalder ex rel*. *Nalder v. United Automobile Insurance Co*.[255] There, the first certified question, which involved the extent of an insurer's liability for breaching the duty to defend, was squarely addressed by the intervening Supreme Court of Nevada case.[256]

The Supreme Court of Alabama's decision in *Christensen v. Southern Normal School*,[257] although still technically a denial in part of certification, is unique because the certifying court posed its questions in the alternative—asking either for a standard to apply in determining whether the plaintiffs were trying to circumvent an Alabama rule that there is no cause of action for educational malpractice, or for the court to decide whether the plaintiffs had run afoul of that rule in that particular case.[258] The court opted to establish standards for this determination and thus left it to the certifying federal court to apply those standards to the facts of the case.[259] Thus, unlike in the Nevada cases in this category, the Alabama court in *Christensen* created the new controlling precedent within the same case in which it declined a certified question based on that newly minted authority.

Given the procedural circumstances of this category of cases—a state supreme court opinion addressing the certified questions issued while the certification request was pending—these decisions are certification denials

251. *Compare* Ord. Certifying Question to Nev. Sup. Ct., *Guinn*, 130 Nev. 1184 (No. 60888) (filed May 14, 2012), *with Lavi*, 325 P.3d 1265 (decided May 29, 2014), *and Guinn*, 130 Nev. 1184 (certification declined June 26, 2014).

252. *Compare Guinn*, 130 Nev. at 1184, *with Lavi,* 325 P.3d at 1267–69.

253. *See Guinn*, 130 Nev. at 1184.

254. *See id.*; *see also infra* Part III.C.4.

255. Nalder *ex rel*. Nalder v. United Auto. Ins. Co., 449 P.3d 1268 (Nev. 2019) (unpublished table decision) (certification declined on Sept. 20, 2019) (citing Century Sur. Co. v. Andrew, 432 P.3d 180, 181 (Nev. 2018) (decided Dec. 13, 2018)); *see also* Ord. Certifying Question to Nev. Sup. Ct., *Nalder*, 449 P.3d 1268 (No. 70504) (filed June 7, 2016).

256. *Compare Nalder,* 449 P.3d at 1268, *with Century Sur.*, 432 P.3d at 181.

257. 790 So. 2d 252 (Ala. 2001).

258. *Id.* at 253.

259. *Id.* at 254–56.

in name only. Because the questions posed in the declined cases were nearly identical to those answered in the decided cases, the federal court still received the benefit of an answer from the state high court. However, except for *Christensen*, this category of denials still leaves something to be desired for federal courts and litigants due to the delay between the decision in the decided case and the declination and closure of the certification request in the state high court. In the *K&P* and *SFR* case sets, the Supreme Court of Nevada took approximately two and three months respectively to decline certification and return the case to the federal court.[260] *Guinn* was somewhat better, as the lapse was approximately one month, but *Nalder* involved a delay of nine months between the decision in the controlling case and the denial of certification, during which the case could have proceeded in federal court.[261]

That said, the Supreme Court of Nevada did take an important step to assist the federal court and the parties in these and other cases in which it declined certification due to existing precedent that controlled the outcome—in every case, the Nevada court directed the parties to the specific case or cases that it believed were controlling.[262] Thus, although the federal court did not receive a direct answer to its certified questions, it did receive some guidance from the state court regarding the legal principles that it believed were applicable to the pending case. The same is not true for the Ohio and Alabama high courts, which both denied certification on the ground that controlling precedent existed without highlighting the precedent to which they referred.[263]

2. A Threshold Issue Obviates the Certified Questions

The Supreme Courts of Ohio and Alabama both declined certified questions in situations in which they found that a threshold requirement or prerequisite underlying the questions was not satisfied, which rendered answering the questions unnecessary. In the Ohio case *Arbino v. Johnson & Johnson*,[264] the state high court declined a certified question about the constitutionality of a state statute because the plaintiff had realized during discovery that the statute did not apply to her.[265] As a result, she lacked standing to challenge the statute on any basis, so the court did not need to consider the specific challenge posed in the certified question.[266] Likewise, in *Foley v. University of Dayton*,[267] the Supreme Court of Ohio declined three

260. *See supra* note 248.
261. *See supra* notes 251, 255.
262. *See, e.g.*, 2014-3 IH Borrower, LP v. Las Vegas Dev. Grp., LLC, 401 P.3d 213 (Nev. 2017); U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC, 489 P.3d 514, 514 (Nev. 2021) (unpublished table decision); *see also* Appendix, Table 2.
263. *See, e.g.*, Dunn v. Ethicon, Inc., 835 N.E.2d 381 (Ohio 2005) (unpublished table decision); Heatherwood Holdings, LLC v. First Com. Bank, 61 So. 3d 1012, 1014 (Ala. 2010).
264. 880 N.E.2d 420 (Ohio 2007).
265. *Id.* at 439.
266. *Id.*
267. 81 N.E.3d 398 (Ohio 2016).

questions about the statute of limitations and privileges applicable to the tort of negligent misidentification because it determined that no such cause of action existed in Ohio in the first place.[268]

Several Supreme Court of Alabama cases are similar. *Sustainable Forests, L.L.C. v. Alabama Power Co.*[269] involved questions certified from the U.S. District Court for the Northern District of Alabama in a declaratory judgment case about whether a state power company could obtain a right-of-way through condemnation proceedings for the purpose of installing fiber-optic communication lines.[270] In declining the certified questions, the Supreme Court of Alabama expressed concern that the case lacked a justiciable controversy given that the power company had no existing plans to use the rights-of-way for this purpose.[271] As a result, the court lacked subject matter jurisdiction to consider the certified questions.[272]

In *Union Planters Bank, N.A. v. New York*,[273] the Supreme Court of Alabama considered three certified questions, the first of which involved the interpretation of an Alabama statute providing for the creation of a lien on real property pledged as bail in an Alabama state court.[274] The court declined this question on the basis that the Alabama statute did not apply at all under the facts of the case, which involved a real property bail bond in a New York court, so answering the question would not be determinative of the case.[275]

Finally, *Butler v. Alabama Judicial Inquiry Commission*[276] involved an Alabama judge's First Amendment challenge to two Alabama Canons of Judicial Ethics relied on to disqualify him from serving on the state supreme court.[277] The U.S. Court of Appeals for the Eleventh Circuit certified three questions to the Supreme Court of Alabama about the judge's ability to vindicate his constitutional claim in a state forum and also invited the state court to remedy any constitutional defects in the judicial canons.[278] In response, the Supreme Court of Alabama narrowed one canon that it found to be facially unconstitutional and clarified the scope of the other to avoid any constitutional issues.[279] As a result, having cured the issues raised in the judge's First Amendment claim, the court declined to answer the certified questions.[280]

These cases are truer declinations than the first category discussed above in the sense that the state court did not address the specific unsettled state law questions that the federal court wished to have answered. However, in each

268. *Id.* at 399.
269. 805 So. 2d 681 (Ala. 2001).
270. *Id.* at 682–83.
271. *Id.*
272. *Id.*
273. 988 So. 2d 1007 (Ala. 2008).
274. *Id.* at 1010.
275. *Id.*
276. 802 So. 2d 207 (Ala. 2001).
277. *Id.* at 211.
278. *See id.* at 218–19.
279. *Id.*
280. *Id.*

case, the state court's resolution of the threshold issue still disposed of the certified questions, thus providing similar guidance to what the federal court would have received in an opinion responsive to the questions.

3. The Procedural Posture of the Case Makes It Ill-Suited for Certification

The third recurring justification for declining certification offered in the target jurisdictions is among the discretionary factors considered by the Oregon Supreme Court—the only state high court to offer detailed standards governing the exercise of its discretion to accept or decline certification under the Uniform Act criteria.[281] Specifically, the Oregon court considers the "procedural posture of [the] case" and is more likely to accept certification when "a case certified by a federal district court [has] progressed at least to the entry of a pretrial order before certification is sought."[282] The state supreme courts in Nevada and Alabama likewise found that certification at too early a procedural stage posed difficulties for the receiving court—and indeed, all but one of the cases in this category involved certification from either a federal district or bankruptcy court.

In *Volvo Cars of North America, Inc. v. Ricci*,[283] the Supreme Court of Nevada wholly declined certification of questions involving the admissibility of evidence of government and industry standards in a strict products liability case.[284] The court explained that accepting certification would "resolve only a discrete evidentiary issue" that would have "at best, a speculative impact in determining the underlying case" given that the decision would be made pretrial—the case had been remanded to the U.S. District Court for the District of Nevada for a new trial for an unrelated reason.[285] In the Nevada court's view, answering the questions at that stage of the case would be akin to "resolv[ing] a motion in limine before the federal trial" and therefore "would not promote judicial efficiency either for this court or for the federal courts."[286]

The Supreme Court of Nevada likewise declined certification in full in *Scottsdale Insurance Co. v. Liberty Mutual Insurance Co.*,[287] in which the District of Nevada also certified questions pretrial and before ruling on the merits of any dispositive motions.[288] The state court explained that the "district court ha[d] not yet made any factual determinations" regarding underlying facts that the parties disputed, and without established facts, the answers to the certified questions would not be potentially determinative of

281. *See* W. Helicopter Servs., Inc. v. Rogerson Aircraft Corp., 811 P.2d 627, 633 (Or. 1991).
282. *Id.*
283. 137 P.3d 1161 (Nev. 2006).
284. *See id.* at 1163–64.
285. *See id.* at 1164.
286. *Id.*
287. 130 Nev. 1241 (2014) (unpublished table decision).
288. *See id.*; *see also* Scottsdale Ins. Co. v. Liberty Mutual Ins. Co., No. 12-CV-01328 (D. Nev.) (filed July 27, 2012) (federal court docket).

"any part of the federal case" as required under Nevada Rule of Appellate Procedure 5.[289] The court indicated that it might accept the certified questions if the federal court later certified them again "under circumstances more conducive to [its] consideration of the[] issues."[290]

In *In re Fontainebleau Las Vegas Holdings LLC*,[291] the Supreme Court of Nevada declined one of three certified questions regarding the Nevada mechanic's and materialman's lien statutes due to a lack of available facts, noting that the question was "largely factual and the discovery process [was] in its infancy" in the bankruptcy court.[292] The court's treatment of *Byrd Underground, LLC v. Angaur, LLC*[293] was similar, as it declined one of the three questions certified there regarding the priority of mechanic's liens on the ground that answering it would require the court to resolve the core factual dispute in the case, which was reserved for the trier of fact and had not yet been resolved in the bankruptcy court.[294]

The court of last resort in Alabama also rejected certification based on the procedural posture of the case in the certifying court. For example, *Heatherwood Holdings, LLC, v. First Commercial Bank*[295] involved three questions certified by a bankruptcy court related to the disputed existence of a restrictive covenant as to a golf course in a residential development.[296] Although it answered the first of the three questions, the court noted in its discussion that the certification occurred "while summary-judgment motions [were] pending in the Bankruptcy Court" and described some of the "number of factual disputes [that] remain[ed] to be developed."[297] As a result, and because the second and third questions "could be interpreted in multiple ways" but apparently involved notice and estoppel issues that could be resolved under existing Alabama law, the court declined them.[298] However, it invited the certifying bankruptcy court to resubmit them if it "appear[ed] . . . after subsequent developments in the matter . . . that there [was] no clear Alabama precedent" after all.[299]

In *Spain v. Brown & Williamson Tobacco Corp.*,[300] the Supreme Court of Alabama declined most of the questions certified by the Eleventh Circuit due to concerns about the procedural posture of the case.[301] The court pointed out that it had only "bare-bones facts" before it given that the plaintiff's complaint was dismissed before discovery in the district court and also

289. *Scottsdale*, 130 Nev. at 1241.
290. *Id.*
291. 289 P.3d 1199 (Nev. 2012).
292. *Id.* at 1207–09.
293. 332 P.3d 273 (Nev. 2014).
294. *Id.* at 275, 279–80.
295. 61 So. 3d 1012 (Ala. 2010).
296. *Id.* at 1014.
297. *Id.* at 1021, 1024.
298. *Id.* at 1026.
299. *Id.*
300. 872 So. 2d 101 (Ala. 2003).
301. *Id.* at 116.

discussed the procedural difficulties certification poses even when it occurs on appeal:

> [W]hen a federal court certifies questions to us, quite understandably, it often tenders a variety of questions so that it will have ready answers to all questions before it in the event its further analysis of the record renders answers to some of the questions not useful, while the answer to one or more of the remaining questions might dispose of the appeal. Consequently, certified questions can present tension between the legitimate, yet competing, interests of this Court in avoiding answering questions not necessary to a decision and the interests of a federal court needing assistance in dealing with uncharted areas of state law.[302]

Against this backdrop, the court found it appropriate to decline all but one of the questions at least until "[a]fter the federal litigation ha[d] produced a final determination of the merits" of the defenses raised in the case.[303]

This category dovetails with and proffers one explanation for the quantitative observation above that the high courts in the target jurisdictions were generally more likely to decline a certification request from a district or bankruptcy court. Given that certification at any stage requires the state court to decide difficult, unresolved legal questions without the benefit of having presided over the case as those questions arose, receiving certified questions at an early procedural stage when their import may be unclear compounds the issue.

4. The Court Lacks Necessary Factual Context or Briefing

Another related but distinct justification the target jurisdictions often offered for declining certification was a lack of factual or legal context needed to resolve the certified questions. This category differs from the previous one because in these declinations, the declining court did not identify the early procedural posture of the case as a reason for rejecting the certified questions.

In one of the Supreme Court of Ohio's few explained certification denials, *Lutz v. Chesapeake Appalachia, L.L.C.*,[304] the court cited a concern with an undeveloped factual record.[305] There, the state court directed the certifying federal court to apply traditional contract interpretation principles, which it said was established precedent that would resolve the case if the oil and gas leases at issue were unambiguous.[306] However, if the leases were ambiguous, the court could not carry out the intent of the parties as required under contract construction principles because it simply did "not have extrinsic evidence" before it regarding the parties' decades-long contractual relationship.[307]

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302. *Id.* at 104–05.
303. *Id.* at 116.
304. 71 N.E.3d 1010 (Ohio 2016).
305. *See id.* at 1012–13.
306. *Id.*
307. *Id.* at 1013.

The Supreme Court of Nevada has also declined certification when the federal court's certification order, the record, or both did not provide the factual context that had given rise to the certified question.[308] For example, in *Magliarditi v. TransFirst Group, Inc.*,[309] the court answered five of seven certified questions regarding the application of the alter ego doctrine to judgment creditors and various types of business entities.[310] However, the court declined the remaining two questions pertaining to the applicability of an alter ego theory to trusts because, unlike the answered questions, the record in the case did not reveal the nature of the specific trusts involved, so the court could not discern whether a response to these questions would be determinative of any issue.[311]

The Nevada court attempted to fix the gap in factual context in *In re Swan*.[312] There, the court declined a bankruptcy court's certification request because it "present[ed] a mixed factual and legal inquiry that exceed[ed] the scope of NRAP 5(a)," which authorizes the court to answer only questions of law.[313] Because neither the record nor the certification order addressed the critical fact question of whether the contract at issue constituted a lien or an assignment, the state high court asked the bankruptcy court to clarify the issue and requested an amended certification order within sixty days.[314]

In *Guinn*, discussed above, the Nevada high court rejected the third certified question on the ground that the certification order lacked sufficient context for the question, which asked whether a time limitation in a Nevada statute was substantive or procedural.[315] Indeed, the federal district court's certification order discussed the general factual and procedural background in the case, which provided an adequate backdrop for the first two certified questions, but it did not explain how the issue involving the statute's time limitation had come up or how it would bear on the case.[316] And because the certification posture prevents the state high court from making any factual

308. Nevada certification jurisprudence requires the Supreme Court of Nevada to accept the facts in the certification order but permits the parties to supplement the record before the state court with other materials that do not contradict that order. *See In re* Fontainebleau Las Vegas Holdings, 267 P.3d 786, 794–95 (Nev. 2011). Many other jurisdictions similarly restrict the state supreme court to the facts in the certification order. *See id.* at 794 (collecting cases).

309. 450 P.3d 911 (Nev. 2019) (unpublished table decision).

310. *Id.*

311. *Id.*

312. 132 Nev. 987 (2016) (unpublished table decision).

313. *Id.*

314. *Id.* The parties were apparently able to resolve the proceeding in the bankruptcy court and thus no amended certification order was ever issued. *See In re* Swan, No. 11-BK-13432 (Bankr. D. Nev.) (filed March 11, 2011) (federal court docket).

315. Guinn v. Fed. Deposit Ins. Corp., 130 Nev. 1184 (2014) (unpublished table decision).

316. *See* Ord. of Certification from the U.S. Dist. Ct. for the Dist. of Nev., *Guinn*, 130 Nev. 1184 (No. 09-CV-01809)*; see also* Guinn, 130 Nev. 1184.

findings of its own,[317] this left the court without the information that it needed to respond to the certified question.[318]

Another Nevada case, *Mack v. Williams*,[319] involved civil rights claims that a plaintiff asserted against prison officials after she was strip-searched while attempting to visit an inmate.[320] Although it answered some of the certified questions, the Supreme Court of Nevada declined the federal district court's first certified question inquiring whether the due process clause of the Constitution of the State of Nevada created a private right of action.[321] The court explained that the "certification order yield[ed] little information about the nature of the procedural due-process claim" that the plaintiff apparently asserted, including failing to identify the specific liberty interest claimed and failing to describe any allegedly deficient process or procedure.[322] As a result, to answer the question, the court would have to "apply a framework to factual and legal uncertainty."[323]

Unlike the other two jurisdictions discussed, the Supreme Court of Alabama seemed willing to answer certified questions even when the factual context for the question was lacking. For example, in *Heatherwood*, discussed above, the court apparently did not find that the "vigorously dispute[d]" facts in the case prevented it from answering the first certified question and went on to decide "an abstract question of law" regarding whether a relevant Arizona court of appeals decision was consistent with Alabama law.[324] The Alabama court also answered some of the certified questions in *Spain*, discussed above, despite its observation that "[f]acts not before [it were] legion."[325] In doing so, the court acknowledged the tension between this approach and its handling of state trial court certifications of controlling questions of law under Alabama Rule of Appellate Procedure 5[326]:

> [Q]uite often when asked to respond to a certified question from a federal court, in the interest of comity we put aside concerns as to unknown or uncertain facts that might affect our answer so as to assist the federal court in answering a question of state law. If the same questions were certified to us by a state trial court pursuant to Rule 5, we would decline to answer

317. *See, e.g.*, *In re* Fontainebleau Las Vegas Holdings, 267 P.3d 786, 795 (Nev. 2011) ("[T]his court cannot make findings of fact in responding to a certified question.").
318. *See Guinn*, 130 Nev. 1184.
319. 522 P.3d 434, 439 (Nev. 2022).
320. *Id.* at 439.
321. *Id.* at 440–41.
322. *Id.* at 440.
323. *Id.*
324. Heatherwood Holdings, LLC v. First Com. Bank, 61 So. 3d 1012, 1021 (Ala. 2010).
325. Spain v. Brown & Williamson Tobacco Corp., 872 So. 2d 101, 105 (Ala. 2003).
326. *See* ALA. R. APP. P. 5(a) ("A petition to appeal from an interlocutory order must contain a certification by the trial judge that, in the judge's opinion, the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an immediate appeal from the order would materially advance the ultimate termination of the litigation, and that the appeal would avoid protracted and expensive litigation.").

> them based upon the presence of significant and unresolved factual issues.[327]

The state high courts in Nevada and Alabama have also rejected certified questions for which the parties had inadequately briefed the issues. For example, in *Badillo v. American Brands, Inc.*,[328] the Supreme Court of Nevada answered the first of two certified questions, holding that Nevada law does not recognize a cause of action for medical monitoring but may permit a medical monitoring remedy.[329] As for the second question—what elements the plaintiff would need to prove to be entitled to medical monitoring—the court declined to respond because the necessary elements "may depend upon the cause of action for which the medical monitoring is a remedy," and "[t]he parties ha[d] not meaningfully briefed the issue."[330] Specifically, although courts had allowed a medical monitoring remedy for an array of contract and tort causes of action, the plaintiffs seeking recognition of the remedy in Nevada had not identified the cause or causes of action that they were relying on, so the court declined to consider the issue without that critical information.[331]

The Nevada court of last resort also lacked necessary briefing in *GMAC Mortgage, LLC v. Nevada Ass'n Services, Inc.*,[332] in which it had initially accepted a certified question about a Nevada statute related to the priority of a homeowner's association lien.[333] Believing that the federal Fair Debt Collection Practices Act[334] may impact the answer to the question, the court requested clarification from the district court within sixty days.[335] When neither the district court nor the parties responded within that time, the court declined the question, fearing that an answer interpreting the Nevada statute without this necessary legal context may not be determinative of the case.[336]

The Supreme Court of Alabama has likewise declined cases because the parties' briefs lacked the legal analysis necessary to aid the court's consideration of the certified questions. In *Union Planters*, the court refused to answer the second of three certified questions, which asked whether a bail bond affidavit created an equitable mortgage, because the parties had not briefed any basis for such a mortgage under Alabama law other than the statute that the court had found inapplicable in addressing the first certified question.[337] Thus, the court lacked the legal context to address the second question.[338] The Alabama court also discussed the parties' failure to brief the construction of the title insurance policy at issue in *Stewart Title*

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327. *Spain*, 872 So. 2d at 104.
328. 16 P.3d 435 (Nev. 2001).
329. *Id.* at 437.
330. *Id.*
331. *Id.* at 440.
332. 132 Nev. 972 (2016) (unpublished table decision).
333. *Id.*
334. 15 U.S.C. §§ 1692–1692p.
335. *GMAC Mortgage*, 132 Nev. 972.
336. *Id.*
337. Union Planters Bank, N.A. v. New York, 988 So. 2d 1007, 1008–09, 1011 (Ala. 2008).
338. *See id.* at 1010–11.

Guaranty Co. v. Shelby Realty Holdings[339] and ultimately declined the certified question there because it could potentially be "properly and fairly resolved by looking to the specific language of the policy."[340]

This category of certification denials highlights the limits that state high courts face in the certification posture—although it can reformulate the certified questions under the state certification scheme, the court is confined to the facts and legal analysis presented in the federal court's certification order, the parties' briefing on the certified questions, and any other materials permitted to be included in the record. This places the onus on federal courts to include the fullest context possible for each certified question in the certification order and to certify only questions that are directly tied to the facts of the case. In addition, the parties and their counsel should ensure that the record before the state court is complete and that their briefing adequately covers each of the questions certified by the federal court.

5. The Certified Question Is Actually an Issue of Federal Law

The Supreme Courts of Nevada and Alabama also each declined certification in cases in which, in the court's view, the certified questions were, in reality, issues of federal law that the state court lacked the authority to resolve. For example, in *Reinkemeyer v. Safeco Insurance Co. of America*,[341] the District of Nevada certified questions involving a Nevada insurance statute, including whether application of the statute to homeowner's insurance policies "violated the United States and Nevada Constitutions."[342] The court declined this question in part because it "ha[d] no authority under NRAP 5 to answer the . . . question concerning the constitutionality of the statute under the United States Constitution."[343] Similarly, in the *GMAC Mortgage* case discussed above, the Nevada court declined a certified question after initially accepting it because the court believed the federal Fair Debt Collection Practices Act may impact the answer to the question.[344]

In *Palmore v. First Unum*,[345] the Supreme Court of Alabama had also initially accepted the question certified to it by the Northern District of Alabama.[346] The court later declined certification upon further consideration because the district court's summary of the facts and circumstances of the case "ma[de] clear" that resolution of the question "necessarily involve[d] the interpretation of a federal statute," the savings clause[347] of the Employee

339. 83 So. 3d 469 (Ala. 2011).
340. *Id.* at 472.
341. 16 P.3d 1069 (Nev. 2001).
342. *Id.* at 1070.
343. *Id.*
344. GMAC Mortg., LLC v. Nevada Ass'n Servs., Inc., 132 Nev. 972 (2016).
345. 841 So. 2d 233 (Ala. 2002).
346. *Id.* at 234.
347. 29 U.S.C. § 1144(b)(2)(A).

Retirement Income Security Act of 1974.[348] Because "[a]uthoritative interpretation of federal statutory language is *ultimately* declared by the federal courts," any interpretation that the Supreme Court of Alabama provided would "have no binding force or effect in federal court" and would therefore violate Alabama Rule of Appellate Procedure 18's determinativeness requirement.[349]

Similarly, in *United States v. Parvin*,[350] the Supreme Court of Alabama declined one of two certified questions regarding the Alabama statute for the crime of indecent exposure.[351] The rejected question focused on whether alleging the statutory language was sufficient to charge the offense, but the court declined it because, given that the underlying case was pending in federal court, federal jurisprudence controlled the answer.[352]

This set of cases suggests a concern among the state high courts with exercising only the power specifically authorized under the state certification scheme: answering unsettled questions of *state* law that fit within the Uniform Act criteria. It also highlights that in cases in which both federal and state law issues are involved, the federal and state courts' views could differ as to which law is ultimately dispositive of the certified issues.

IV. THE PATH FORWARD: AVOIDING THE REJECTION OF CERTIFIED QUESTIONS

Based on the quantitative and qualitative observations about certification denials discussed in the previous part, this part proposes revisions or additions to the Uniform Act—and ultimately, state court certification schemes—aimed at providing increased guidance to federal courts and litigants regarding when and why a state high court might decline a certification request.

A. Implementing a Presumption-Like Mechanism in Favor of Certification in Appropriate Circumstances

The prevailing concern related to certification denials remains the difficulty in predicting whether a state court will decline certification in any given case, especially considering the inherent delay in the proceeding when questions are certified. Because few state courts have discussed the considerations that inform their exercise of discretion in accepting and declining certification requests, and because the findings here do not indicate that these decisions are necessarily tied to the substantive category that the case falls within, more predictability in this area is desirable.

348. Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of the U.S.C.); *see Palmore*, 841 So.2d at 235.

349. *Palmore*, 841 So.2d at 235–36. The court also emphasized that the Eleventh Circuit appeared to have addressed the certified issue. *Id.* at 236 (citing Walker v. Southern Co. Servs., Inc., 279 F.3d 1289, 1291–94 (11th Cir. 2002)).

350. 31 So. 3d 101 (Ala. 2009).

351. *Id.* at 102–03.

352. *Id.* at 103.

One possible approach would be to add a presumption-like mechanism to the Uniform Act—in certain cases in which the receiving state court is more likely to accept certification, that acceptance would be presumed unless, in the view of the receiving court, principles of comity and justice counseled otherwise. The certification study conducted here suggests that state high courts will be more likely to accept certification in cases with at least one of two characteristics.

The first and clearest characteristic is that the certifier is an appellate tribunal—a federal circuit court or bankruptcy appellate panel. Although no such certifications occurred within the jurisdictions and time period studied, this would presumably also extend to certifications from the U.S. Supreme Court, as well as certifications from other specialty federal appellate courts like the U.S. Tax Court. The proposition that these cases are more likely to be appropriate for certification finds support in the decisions of several states to permit certification from *only* these categories of federal courts in their certification rules or statutes.[353] These jurisdictions would therefore need only to adopt the presumption-like provision with respect to the second characteristic, discussed below.

The second characteristic is derived from the first justification discussed above that the state high courts in the target jurisdictions offered for declining certification: that although no controlling precedent existed when the federal court certified the question, that precedent now exists due to a case that was pending before the state court when the certification request was made. Because of the potential for this to occur, certification is less likely to be declined in cases in which, at the time of certification, there are no cases pending before the state high court involving substantially similar legal issues. If the legal issues are truly of first impression in the sense that no other action on the court's docket involves the same questions, certification is likely appropriate, assuming that the threshold Uniform Act requirements are otherwise met. In addition, ensuring that no case involving substantially similar issues is pending on the state high court's docket helps avoid the delay issue seen in the Nevada cases discussed above in which the state court held the cases on its docket for several months after it issued the relevant controlling precedent before ultimately declining them.[354]

Proposed language for this presumption-like provision of the Uniform Act is below:

353. *See, e.g.*, CAL. R. CT. 8.548; D.C. CODE § 11-723 (2023); FLA. R. APP. P. 9.150; MISS. R. APP. P. 20; N.Y. CT. R. 500.27; PA. R. APP. P. 3341; WIS. STAT. § 821.01 (2023); *see also* TEX. R. APP. P. 58.1 (permitting certification by "any federal appellate court").

354. In cases in which substantially similar legal issues are already pending before the state supreme court, the most efficient course in the federal court may be to hold the case in abeyance until the state court issues its decision. This provides the federal court the benefit of state court guidance on the unsettled questions while also allowing it to promptly resume proceedings without having to wait for the state court to return the case.

> Unless the [Supreme Court] of this State determines otherwise in the interest of justice, and subject to the requirements in [Section 3],[355] the [Supreme Court] shall answer a certified question of law when:
>
> (1) The question is certified to it by a federal appellate court or bankruptcy appellate panel; or
>
> (2) The question is one of first impression, and no case pending before the [Supreme Court] at the time of certification raises the same or substantially similar legal issues.

Given that cases with these characteristics are already more likely to be accepted by state high courts, this addition to the Uniform Act and, eventually, state certification schemes would merely formalize this trend, introducing increased efficiency into the certification process when these certification-worthy cases are concerned and explicitly advising interested parties of the increased chance of garnering an acceptance in these cases. And because it preserves state court discretion, this presumption-like mechanism strikes an appropriate balance between assisting federal courts and litigants in determining whether to seek certification and retaining the state court's autonomy to dictate whether and how to fulfill its role as the final authority on the interpretation of state law.

B. Other Additions to the Uniform Act

Although the presumption-like mechanism proposed above would increase federal courts' and litigants' ability to predict whether a certification request would be accepted, it does not address all of the issues with certification denials described in the previous parts. Several other procedural additions to the Uniform Act and eventually to state certification schemes would provide further clarity in this area.

1. Require State High Courts to Explain Their Reasons for Declining Certification

As drafted, the Uniform Act affords state courts the discretion to decline certification requests as well as the discretion to leave those declinations unexplained. As a result, some jurisdictions rarely explain these decisions, a practice that has been met with frustration by federal courts. The Uniform Act should be revised to require at least a brief explanation of the basis for rejecting a certified question so that federal courts and litigants will better understand the kinds of issues that the state court is willing to address on certification. Further, when the state court declines due to existing controlling precedent, this explanation should include identification of that precedent.

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355. This section of the Uniform Act sets out the determinativeness and lack of controlling precedent requirements. *See* Unif. Certification of Questions of L. Act § 3 (Nat'l Conf. of Comm'rs on Unif. State L. 1995). The adopting state court would adjust this to reference the state's own iteration of that provision.

Alternatively, if the presumption procedure above is introduced in a state, the certification rule could require an explanation in only those cases in which certification is declined even when one or more of the characteristics for presumptive acceptance are present. This would still allow the state court discretion in whether to explain most certifications but would shed light on the considerations that presage denial of questions that the court would typically be amenable to accepting.

2. Implement a Deadline for the State Court's Decision to Accept or Decline Certification

Although most jurisdictions do not impose a time limit for the court to accept or reject certified questions, at least two states have adopted such a deadline. Under the South Carolina certification rule, the state court of last resort must make this decision within forty-five days after receiving the certification order.[356] In Wyoming, the deadline for decision is thirty days after the certification order is docketed in state court, and the certification request is deemed denied if the court does not issue a decision by this deadline.[357] And although the Utah certification rule does not include a specific time limit, it urges the state supreme court to decide whether to accept or decline certification "promptly."[358] Introducing a deadline for accepting or rejecting certification requests in states in which no time limit exists will help reduce the delay in federal court while the parties await the state court's resolution of the certification request. Especially in cases in which certification is declined and the parties return to federal court at the same stage of the proceeding as when they left it, shortening the time that the certification request remains pending in state court would speed up the ultimate resolution of the case. The cost, of course, is devoting additional judicial resources to deciding whether to accept or decline certified questions more quickly, but this policy choice is warranted in light of the U.S. Supreme Court's promotion of certification as a mechanism of efficiency and cooperative federalism.[359]

3. Permit the Federal Court to Amend the Certification Order on an Expedited Basis upon Request by the State High Court

In several of the cases discussed above in which certification was declined, the declination resulted from a lack of necessary factual or legal context. In others, the rejection resulted from the state court's view that the dispositive issues underlying the certified questions were in reality issues of federal law. In both situations, providing a mechanism for the state court to seek additional detail or clarification from the certifying federal court could avoid these issues. A provision could be added to the Uniform Act under which

356. S.C. APP. CT. R. 244.
357. WYO. R. APP. P. 11.04.
358. UTAH R. APP. P. 41.
359. *See* Lehman Bros. v. Schein, 416 U.S. 386, 390–91 (1974).

the state court could request more information or clarification of the certified issues, and the federal court could respond with an amended certification order addressing those concerns within a specific expedited time period—perhaps fourteen days. This would promote conversation between the certifying and receiving court regarding their differing views of the certification-worthiness of the questions and very well might, in some cases, eliminate the state court's impetus to decline.[360]

CONCLUSION

Certification remains a valuable tool for federal courts to seek state supreme courts' expertise and interpretive authority when confronted with difficult and unsettled questions of state law. And with every state but one permitting certification, understanding what questions state supreme courts are likely to accept and decline equips federal courts and litigants to better avoid the risk of requesting the state court's insight only to be turned away. To aid those seeking certification, state legislatures and state supreme courts should amend their certification schemes to presume acceptance in cases in which state courts are already more likely to accept the certified questions and provide other procedures to eliminate inefficiency and increase transparency in the certification process, with the goal of introducing more certainty into the decades-long practice of certifying questions to state courts.

360. In some jurisdictions, these proposed solutions may require constitutional implementation in addition to modifying the certification statute or rule. *See, e.g.*, *In re* Allcat Claims Serv., L.P., 356 S.W.3d 455, 475 (Tex. 2011) (Willett, J., concurring in part and dissenting in part) ("[T]he Separation of Powers provision [of the Texas Constitution] limits the Legislature's ability to interfere with the inner workings of the judiciary, and vice versa."). Some states already have certification provisions in their constitutions to which appropriate adjustments could be made if necessary. *See, e.g.*, ALA. CONST. art. VI, § 140(b)(3); FLA. CONST. art. V, § 3(b)(6).

APPENDIX

Table 1 – Ohio Certification Requests (Jan. 2000–June 2023)

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Funk v. Rent-All Mart, Inc., 742 N.E.2d 127 (Ohio 2001)	N.D. Ohio	Answered	State statutory interpretation; torts; employment	N/A
Rolf v. Tri State Motor Transit Co., 745 N.E.2d 424 (Ohio 2001)	N.D. Ohio	Answered	Torts; family law	N/A
Holeton v. Crouse Cartage Co., 748 N.E.2d 1111 (Ohio 2001)	N.D. Ohio	Answered	State statutory interpretation; state constitutional law	N/A
In re Stewart, 771 N.E.2d 250 (Ohio 2002)	B.A.P. 6th Cir.	Answered	State statutory interpretation; property	N/A
Gutmann v. Feldman, 780 N.E.2d 562 (Ohio 2002)	S.D. Ohio	Answered	State statutory interpretation; securities	N/A
Kemper v. Mich. Millers Mut. Ins. Co., 781 N.E.2d 196 (Ohio 2002)	N.D. Ohio	Answered; dissent would decline in part	Insurance	N/A
Weller v. Titanium Metals Corp., 806 N.E.2d 154 (Ohio 2004)	S.D. Ohio	Answered	Employment; state statutory interpretation	N/A
Hensley v. Columbus, 807 N.E.2d 365 (Ohio 2004) (unpublished table decision)[361]	6th Cir.	Answered	Property	N/A
In re Nowak, 820 N.E.2d 335 (Ohio 2004)	B.A.P. 6th Cir.	Answered	State constitutional law	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
In re Gill, 821 N.E.2d 559 (Ohio 2004)	B.A.P. 6th Cir.	Answered	State statutory interpretation; state constitutional law	N/A
McNamara v. City of Rittman, 838 N.E.2d 640 (Ohio 2005)	6th Cir.	Answered	Property	N/A
Kish v. City of Akron, 846 N.E.2d 811 (Ohio 2006)	6th Cir.	Answered	State statutory interpretation; local government	N/A
Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co., 861 N.E.2d 121 (Ohio 2006)	N.D. Ohio	Answered; concurrence would decline in part	Insurance	N/A
Mendenhall v. City of Akron, 881 N.E.2d 255 (Ohio 2008)	N.D. Ohio.	Answered	Municipal law; state criminal law; state constitutional law	N/A
Groch v. Gen. Motors Corp., 883 N.E.2d 377 (Ohio 2008)	N.D. Ohio	Answered	State constitutional law	N/A
Albrecht v. Treon, 889 N.E.2d 120, 129 (Ohio 2008)	S.D. Ohio	Answered	Property	N/A
Cordray v. Planned Parenthood Cincinnati Region, 911 N.E.2d 871 (Ohio 2009)	6th Cir.	Answered	State statutory interpretation; healthcare law	N/A
Nat'l Union Fire Ins. Co. of Pittsburgh v. Wuerth, 913 N.E.2d 939 (Ohio 2009)	6th Cir.	Answered	Torts	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
State Farm Mut. Auto. Ins. Co. v. Grace, 918 N.E.2d 135 (Ohio 2009)	N.D. Ohio	Answered	State statutory interpretation; insurance	N/A
Am. Booksellers Found. for Free Expression v. Cordray, 922 N.E.2d 192 (Ohio 2010)	6th Cir.	Answered	State statutory interpretation	N/A
Stetter v. R.J. Corman Derailment Servs., L.L.C., 927 N.E.2d 1092 (Ohio 2010)	N.D. Ohio	Answered	State statutory interpretation; employment	N/A
Garr v. Warden, Madison Corr. Inst., 933 N.E.2d 1063 (Ohio 2010)	S.D. Ohio	Answered	State criminal law	N/A
Scott v. Houk, 939 N.E.2d 835 (Ohio 2010)	N.D. Ohio	Answered	State criminal procedure; state constitutional law	N/A
Schwering v. TRW Vehicle Safety Sys., Inc., 970 N.E.2d 865 (Ohio 2012)	S.D. Ohio	Answered	State civil procedure	N/A
DeVries Dairy, L.L.C. v. White Eagle Coop. Ass'n, 974 N.E.2d 1194 (Ohio 2012)	N.D. Ohio	Answered	Torts	N/A
Hollingsworth v. Timmerman-Cooper, 978 N.E.2d 116 (Ohio 2012)	S.D. Ohio	Answered	State criminal procedure; evidence	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Anderson v. Barclay's Cap. Real Est., Inc., 989 N.E.2d 997 (Ohio 2013)	N.D. Ohio	Answered	State statutory interpretation; property	N/A
Chesapeake Expl., L.L.C. v. Buell, 45 N.E.3d 185 (Ohio 2015)	S.D. Ohio	Answered	State statutory interpretation; property	N/A
In re Messer, 50 N.E.3d 495 (Ohio 2016)	Bankr. S.D. Ohio	Answered	State statutory interpretation; property	N/A
Stolz v. J & B Steel Erectors, Inc., 55 N.E.3d 1082 (Ohio 2016)	S.D. Ohio	Answered	State statutory interpretation; torts	N/A
Corban v. Chesapeake Expl., L.L.C., 76 N.E.3d 1089 (Ohio 2016)	S.D. Ohio	Answered	State statutory interpretation; property	N/A
Boyd v. Kingdom Tr. Co., 113 N.E.3d 470 (Ohio 2018)	6th Cir.	Answered	State statutory interpretation; securities	N/A
Bank of N.Y. Mellon v. Rhiel, 122 N.E.3d 1219 (Ohio 2018)	B.A.P. 6th Cir.	Answered	Property; contracts	N/A
Stolz v. J & B Steel Erectors, Inc., 122 N.E.3d 1228 (Ohio 2018)	S.D. Ohio	Answered	State constitutional law; torts; insurance	N/A
Lubrizol Advanced Materials, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 160 N.E.3d 701 (Ohio 2020)	N.D. Ohio	Answered	Insurance; contracts	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Buddenberg v. Weisdack, 161 N.E.3d 603 (Ohio 2020)	N.D. Ohio	Answered	State statutory interpretation	N/A
City of Maple Heights v. Netflix, Inc., 215 N.E. 3d 500 (Ohio 2022)	N.D. Ohio	Answered	State statutory interpretation	N/A
Neuro-Commc'n Servs., Inc. v. Cincinnati Ins. Co., 219 N.E. 3d 907 (Ohio 2022)	N.D. Ohio	Answered; dissent would decline in part	Insurance; contracts	N/A
Platte v. Ford Motor Co., 738 N.E.2d 379 (Ohio 2000) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance; state statutory interpretation; state constitutional law[362]	None given
Schaffer v. State Farm Auto. Ins. Co., 748 N.E.2d 545 (Ohio 2001) (unpublished table decision)	N.D. Ohio	Declined in full	State constitutional law	None given
Comella v. St. Paul Mercury Ins. Co., 756 N.E.2d 110 (Ohio 2001) (unpublished table decision)	N.D. Ohio	Declined in full	State statutory interpretation; insurance	None given
Hunter v. First Union Home Equity Bank, 759 N.E.2d 784 (Ohio 2001) (unpublished table decision)	N.D. Ohio	Declined in full	State constitutional law	None given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Watkins v. Transcon. Ins. Co., 759 N.E.2d 784 (Ohio 2001) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance	None given
Golem v. Put-in-Bay, 761 N.E.2d 43 (Ohio 2002) (unpublished table decision)	N.D. Ohio	Declined in full	State statutory interpretation; state constitutional law; torts	None given
In re Franz, 761 N.E.2d 43 (Ohio 2002) (unpublished table decision)	Bankr. N.D. Ohio	Declined in full	State constitutional law	None given
In re Miller, 762 N.E.2d 368 (Ohio 2002) (unpublished table decision)	Bankr. N.D. Ohio[363]	Declined in full	State constitutional law	None given
Wojcik v. Option One Mortg. Corp., 762 N.E.2d 367 (Ohio 2002) (unpublished table decision)	Bankr. N.D. Ohio[364]	Declined in full	State constitutional law	None given
Keegan v. Am. Int'l Grp, 786 N.E.2d 899 (Ohio 2003) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance[365]	Controlling precedent exists
Richey v. Mitchell, 809 N.E.2d 1156 (Ohio 2004) (unpublished table decision)	6th Cir.	Declined in full	State statutory interpretation; state criminal law[366]	None given
Dunn v. Ethicon, Inc., 835 N.E.2d 381 (Ohio 2005) (unpublished table decision)	6th Cir.	Declined in full	Torts[367]	Controlling precedent exists

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Nat'l Union Fire Ins. Co. of Pittsburgh v. Cavins, 836 N.E.2d 1225 (Ohio 2005) (unpublished table decision)	M.D. Ala.	Declined in full	Insurance; contracts[368]	None given
Luckey v. Butler Cnty., 861 N.E.2d 142 (Ohio 2007) (unpublished table decision)	S.D. Ohio	Declined in full	Civil rights[369]	None given
Mentor Exempted Vill. Sch. Dist. Bd. of Educ. v. Mohat, 944 N.E.2d 1171 (Ohio 2011) (unpublished table decision)	N.D. Ohio	Declined in full	Trusts & estates	None given
HoneyBaked Foods, Inc. v. Affiliated FM Ins. Co., 947 N.E.2d 681 (Ohio 2011) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance[370]	None given
Fireman's Fund Ins. Co. v. Hartford Acc. & Indem. Co., 954 N.E.2d 660 (Ohio 2011) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance[371]	None given
Antioch Co. Litig. Tr. v. Morgan, 45 N.E.3d 242 (Ohio 2016) (unpublished table decision)	6th Cir.	Declined in full	Torts; business organizations[372]	None given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
State ex rel. DeWine v. GMAC Mortg., L.L.C., 57 N.E.3d 1111 (Ohio 2016)	N.D. Ohio	Declined in full	State statutory interpretation; property[373]	None given
Wells Fargo Bank, N.A. v. Allstate Ins. Co., 54 N.E.3d 1227 (Ohio 2016)	N.D. Ohio	Declined in full	Insurance[374]	None given
Am. Mun. Power, Inc. v. Bechtel Power Corp., 54 N.E.3d 1245 (Ohio 2016)	S.D. Ohio	Declined in full	Contracts[375]	None given
Lowe v. Ransier, 62 N.E.3d 184 (Ohio 2016) (unpublished table decision)	B.A.P. 6th Cir.	Declined in full	State statutory interpretation; business organizations[376]	None given
Lutz v. Chesapeake Appalachia, L.L.C., 71 N.E.3d 1010 (Ohio 2016)	N.D. Ohio	Declined in full	Property	Controlling precedent exists; lack of necessary facts
Foley v. Univ. of Dayton, 81 N.E.3d 398 (Ohio 2016)	S.D. Ohio	Declined in full	Torts	Threshold issue obviated questions
Cranfield v. State Farm Fire & Cas. Co., 69 N.E.3d 749 (Ohio 2017) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance; state statutory interpretation[377]	None given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Perry v. Allstate Indem. Co., 69 N.E.3d 748 (Ohio 2017) (unpublished table decision)	N.D. Ohio	Declined in full	Insurance; state statutory interpretation[378]	None given
Linko v. Indem. Ins. Co. of N. Am., 723 N.E.2d 1113 (Ohio 2000) (unpublished table decision)	W.D.N.Y.	Declined in part	Insurance; state statutory interpretation	None given
Vasquez v. Kutscher, 767 N.E.2d 267 (Ohio 2002)[379]	N.D. Ohio	Declined in part	Family law; state statutory interpretation; state constitutional law	Remaining questions mooted by answers given
McClain v. Nw. Cmty. Corr. Ctr., 769 N.E.2d 387 (Ohio 2002)	N.D. Ohio	Declined in part	Employment; state statutory interpretation	None given
D.A.B.E., Inc. v. Toledo-Lucas Cnty. Bd. of Health, 773 N.E.2d 536 (Ohio 2002)[380]	N.D. Ohio	Declined in part	Local government; state statutory interpretation; state constitutional law	Some of remaining questions mooted by answers given; no reason given for declining others
Williams v. Zurich Am. Ins. Co., 788 N.E.2d 645 (Ohio 2003) (unpublished table decision)	N.D. Ohio	Declined in part	Insurance[381]	Remaining questions moot due to controlling precedent
Morgan v. Eads, 818 N.E.2d 1157 (Ohio 2004)[382]	N.D. Ohio	Declined in part	State criminal procedure	Remaining questions mooted by answers given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Arbino v. Johnson & Johnson, 880 N.E.2d 420 (Ohio 2007)	N.D. Ohio	Declined in part	State constitutional law	Threshold issue obviated questions
LeBeau v. Perry Videx, 885 N.E.2d 242 (Ohio 2008)	N.D. Ohio	Declined in part	State constitutional law; state statutory interpretation; torts	Some of remaining questions mooted by answers given; no reason given for declining others
Doe v. Ronan, 937 N.E.2d 556 (Ohio 2010)	S.D. Ohio	Declined in part	State statutory interpretation	Remaining question not sufficiently determinative
Westfield Ins. Co. v. Custom Agri Sys., Inc., 979 N.E.2d 269 (Ohio 2012)[383]	6th Cir.	Declined in part	Insurance; contracts	Remaining questions mooted by answers given
Est. of Monahan v. Am. States Ins. Co., 762 N.E.2d 367 (Ohio 2002) (unpublished table decision)	N.D. Ohio	Dismissed on motion after certification order vacated	Insurance[384]	N/A
Nat'l Indem. Co. v. Ryerson, 780 N.E.2d 1022 (Ohio 2002) (unpublished table decision)	S.D. Ohio	Dismissed on joint motion	Insurance[385]	N/A
Wyser-Pratte Mgmt. Co. v. Telxon Corp., 799 N.E.2d 183 (Ohio 2003) (unpublished table decision)	N.D. Ohio	Dismissed due to settlement	Torts; securities[386]	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Wrinn v. Johnson, 900 N.E.2d 195 (Ohio 2009) (unpublished table decision)	6th Cir.	Dismissed for lack of prosecution	State statutory interpretation[387]	N/A
Berry v. Lucas Cnty. Bd. of Comm'rs., 951 N.E.2d 440 (Ohio 2011) (unpublished table decision)	N.D. Ohio	Dismissed on motion to withdraw	State criminal law[388]	N/A
Corbett v. Beneficial Ohio, Inc., 989 N.E.2d 1048 (Ohio 2013) (unpublished table decision)	S.D. Ohio	Dismissed on motion to withdraw	Property; torts[389]	N/A
Lincoln Elec. Co. v. Travelers Cas. & Sur. Co., 21 N.E.3d 1114 (Ohio 2014) (unpublished table decision)	N.D. Ohio	Dismissed on joint motion	Insurance[390]	N/A
I. B. v. Olentangy Local Sch. Dist. Bd. of Educ., 98 N.E.3d 298 (Ohio 2018) (unpublished table decision)	S.D. Ohio	Dismissed on joint motion	State statutory interpretation; governmental immunity; torts	N/A
Ohioans Against Corp. Bailouts, L.L.C. v. LaRose, 138 N.E.3d 1151 (Ohio 2020) (unpublished table decision)	S.D. Ohio	Dismissed on motion	State constitutional law; state statutory interpretation; state government[391]	N/A
McIntire v. Whirlpool Corp., 172 N.E.3d 160 (Ohio 2021) (unpublished table decision)	N.D. Ohio	Dismissed on joint motion	Torts[392]	N/A

Table 2 – Nevada Certification Requests (Jan. 2000–June 2023)

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Little v. Warden, 34 P.3d 540 (Nev. 2001)	D. Nev.	Answered	State criminal law/procedure	N/A
State Farm Mut. Auto. Ins. Co. v. Fitts, 99 P.3d 1160 (Nev. 2004)	D. Nev.	Answered	Insurance	N/A
In re Christensen, 149 P.3d 40 (Nev. 2006)	Bankr. D. Nev.	Answered	Property; state statutory interpretation	N/A
In re Contrevo, 153 P.3d 652 (Nev. 2007)	Bankr. D. Nev.	Answered	State statutory interpretation; property	N/A
Savage v. Pierson, 157 P.3d 697 (Nev. 2007)	Bankr. D. Nev.	Answered	Property; state statutory interpretation	N/A
Fed. Ins. Co. v. Am. Hardware Mut. Ins. Co., 184 P.3d 390 (Nev. 2008)	D. Nev.	Answered	Insurance	N/A
Boucher v. Shaw, 196 P.3d 959 (Nev. 2008)	9th Cir.	Answered	State statutory interpretation; employment	N/A
Terracon Consultants W., Inc. v. Mandalay Resort Grp., 206 P.3d 81 (Nev. 2009)	D. Nev.	Answered	Torts	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Hartford Fire Ins. Co. v. Trs. of Constr. Indus., 208 P.3d 884 (Nev. 2009)	9th Cir.	Answered	State statutory interpretation; employment	N/A
Rivera v. Philip Morris, Inc., 209 P.3d 271 (Nev. 2009)	D. Nev.	Answered	Torts	N/A
HD Supply Facilities Maint., Ltd. v. Bymoen, 210 P.3d 183 (Nev. 2009)	D. Nev.	Answered	Contracts; employment	N/A
In re Sandoval, 232 P.3d 422 (Nev. 2010)	Bankr. D. Nev.	Answered	State civil procedure	N/A
Boorman v. Nev. Mem'l Cremation Soc'y, 236 P.3d 4 (Nev. 2010)	D. Nev.	Answered	Torts	N/A
Orion Portfolio Servs. 2 LLC v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nevada, 245 P.3d 527 (Nev. 2010)	D. Nev.	Answered	State statutory interpretation; contracts; property	N/A
Att'y Gen. v. Gypsum Res., LLC, 294 P.3d 404 (Nev. 2013)	9th Cir.	Answered	State constitutional law	N/A
Chapman v. Deutsche Bank Nat'l Tr. Co., 302 P.3d 1103 (Nev. 2013)	9th Cir.	Answered	Property; state civil procedure	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
In re Fox, 302 P.3d 1137 (Nev. 2013)	B.A.P. 9th Cir.	Answered	State statutory interpretation	N/A
Progressive Gulf Ins. Co. v. Faehnrich, 327 P.3d 1061 (Nev. 2014)	9th Cir.	Answered	Insurance; contracts	N/A
Century Sur. Co. v. Casino W., Inc., 329 P.3d 614 (Nev. 2014)	9th Cir.	Answered	Insurance	N/A
Greenberg Traurig, LLP v. Frias Holding Co., 331 P.3d 901 (Nev. 2014)	D. Nev.	Answered	Torts	N/A
Brady, Vorwerck, Ryder & Caspino v. New Albertsons, Inc., 333 P.3d 229 (Nev. 2014)	D. Nev.	Answered	Torts	N/A
State Dep't of Tax'n v. Kawahara, 351 P.3d 746 (Nev. 2015)	Bankr. D. Nev.	Answered	Property	N/A
In re Montierth, 354 P.3d 648 (Nev. 2015)	Bankr. D. Nev.	Answered	Property	N/A
State Farm Mut. Auto. Ins. Co. v. Hansen, 357 P.3d 338 (Nev. 2015)	D. Nev.	Answered	Insurance; torts	N/A
Becker v. Becker, 362 P.3d 641 (Nev. 2015)	Bankr. D. Nev.	Answered	State statutory interpretation; business organizations	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
MDC Rests., LLC v. Eighth Jud. Dist. Ct., 383 P.3d 262 (Nev. 2016)	D. Nev.	Answered	State constitutional law; employment	N/A
Kaplan v. Chapter 7 Tr., 384 P.3d 491 (Nev. 2016)	Bankr. D. Nev.	Answered	State statutory interpretation	N/A
K&P Homes v. Christiana Tr., 398 P.3d 292 (Nev. 2017)	D. Nev.	Answered	Property	N/A
Ditech Fin. LLC v. Buckles, 401 P.3d 215 (Nev. 2017)	D. Nev.	Answered	State statutory interpretation; state criminal law	N/A
Adelson v. Harris, 402 P.3d 665 (Nev. 2017)	2d Cir.	Answered	Torts	N/A
SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon, 422 P.3d 1248 (Nev. 2018)	D. Nev.	Answered	State statutory interpretation; property	N/A
Century Sur. Co. v. Andrew, 432 P.3d 180 (Nev. 2018)	D. Nev.	Answered	Insurance	N/A
Figueroa-Beltran v. United States, 467 P.3d 615 (Nev. 2020)	9th Cir.	Answered	State criminal law	N/A
Clark Cnty. v. Eliason, 468 P.3d 817 (Nev. 2020)	D. Nev.	Answered	State statutory interpretation; local government	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Nautilus Ins. Co. v. Access Med., LLC, 482 P.3d 683 (Nev. 2021)	9th Cir.	Answered	Insurance	N/A
Zurich Am. Ins. Co. v. Ironshore Specialty Ins. Co., 497 P.3d 625 (Nev. 2021)	9th Cir.	Answered	Insurance	N/A
U.S. Bank, N.A. v. Thunder Props., Inc., 503 P.3d 299 (Nev. 2022)	9th Cir.	Answered; concurrence would decline	Property	N/A
Leigh-Pink v. Rio Props., LLC, 512 P.3d 322 (Nev. 2022)	9th Cir.	Answered	Torts; state statutory interpretation	N/A
Volvo Cars of N. Am., Inc. v. Ricci, 137 P.3d 1161 (Nev. 2006)	D. Nev.	Declined in full	Torts; evidence	Questions not sufficiently determinative; ill-suited procedural posture
In re Goeden, 210 P.3d 736 (Nev. 2007) (unpublished table decision)	Bankr. D. Nev.	Declined in full	State statutory interpretation; state civil procedure[393]	Recently issued precedent controls case[394]
Guinn v. Fed. Deposit Ins. Corp., 130 Nev. 1184 (2014)	D. Nev.	Declined in full	State statutory interpretation; property; state civil procedure	Recently issued precedent controls case; lack of necessary facts

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Shapiro v. Dicicco, 130 Nev. 1245 (2014) (unpublished table decision)	Bankr. D. Nev.	Declined in full	Property	Predicted lack of necessary briefing because respondents had failed to appear in court below
Bank of Am., N.A. v. One Queensridge Place Homeowners Ass'n, 130 Nev. 1151 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Bank of Am., N.A. v. Platinum Realty & Holdings, LLC, 130 Nev. 1151 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Eagle Invs. v. Bank of Am., N.A., 130 Nev. 1173 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Kal-Mor-USA, LLC v. Bank of Am., 130 Nev. 1203 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Park ex rel. Ray v. U.S. Bank, N.A., 130 Nev. 1227 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Platinum Realty & Holdings, LLC v. Wells Fargo, 130 Nev. 1230 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
RLP-Vervain Ct., LLC v. Wells Fargo, 130 Nev. 1236 (2014) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Scottsdale Ins. Co. v. Liberty Mut. Ins. Co., 130 Nev. 1241 (2014) (unpublished table decision)	D. Nev.	Declined in full	Insurance	Questions not sufficiently determinative; ill-suited procedural posture
In re Swan, 132 Nev. 987 (2016) (unpublished table decision)	Bankr. D. Nev.	Declined in full	Property; contracts/UCC	Lack of necessary facts
GMAC Mortg., LLC v. Nevada Ass'n Servs., Inc., No. 13-CV-01157, 2016 WL 5329576 (D. Nev. Sept. 20, 2016)	D. Nev.	Declined in full	State statutory interpretation; property	Questions not sufficiently determinative; lack of necessary briefing; questions raise federal issue

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
U.S. Bank ex rel. GSAA Home Equity Tr. 2006-9 v. Diamond Creek Homeowners Ass'n, 401 P.3d 212 (Nev. 2017) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
2014-3 IH Borrower, LP v. Las Vegas Dev. Grp., LLC, 401 P.3d 213 (Nev. 2017) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Eagle Invs. v. Bank of Am., N.A., 401 P.3d 213 (Nev. 2017) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Residential Credit Sols. v. Kal-Mor-USA, LLC, 401 P.3d 213 (Nev. 2017) (unpublished table decision)	D. Nev.	Declined in full	State statutory interpretation; property	Recently issued precedent controls case
Livelife, LLC v. Bay Point Cap. Partners, LP, 486 P.3d 1290 (Nev. 2021) (unpublished table decision)	Bankr. D. Nev.	Declined in full	Property	Questions not sufficiently determinative
U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC, 489 P.3d 514 (Nev. 2021) (unpublished table decision)	9th Cir.	Declined in full	Property	Controlling precedent exists

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Badillo v. Am. Brands, Inc., 16 P.3d 435 (Nev. 2001)	D. Nev.	Declined in part	Torts	Lack of necessary briefing
Reinkemeyer v. Safeco Ins. Co. of Am., 16 P.3d 1069 (Nev. 2001)	D. Nev.	Declined in part	State statutory interpretation; insurance	Questions raise federal issue
Rubin v. State Farm Mut. Auto. Ins. Co., 43 P.3d 1018 (Nev. 2002)[395]	9th Cir.	Declined in part	Insurance; torts	Remaining questions mooted by answers provided
In re Fontainebleau Las Vegas Holdings, 289 P.3d 1199 (Nev. 2012)	Bankr. S.D. Fla.	Declined in part	Property; state statutory interpretation	Ill-suited procedural posture
Byrd Underground, L.L.C. v. Angaur, L.L.C., 332 P.3d 273 (Nev. 2014)	Bankr. D. Nev.	Declined in part	State statutory interpretation; property	Ill-suited procedural posture
Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc., 345 P.3d 1040 (Nev. 2015)[396]	9th Cir.	Declined in part	Property; contracts; state statutory interpretation	Remaining questions mooted by answers provided
Nalder ex rel. Nalder v. United Auto. Ins. Co., 449 P.3d 1268 (Nev. 2019) (unpublished table decision)	9th Cir.	Declined in part	Insurance	Recently issued precedent controls case

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Magliarditi v. TransFirst Grp., Inc., 450 P.3d 911 (Nev. 2019) (unpublished table decision)	D. Nev.	Declined in part	Business organizations	Questions not sufficiently determinative; lack of necessary facts
Mineral Cnty. v. Lyon Cnty., 473 P.3d 418 (Nev. 2020)[397]	9th Cir.	Declined in part	Property; state constitutional law	Remaining questions mooted by answers provided
Cantlon v. Wells Fargo & Co., 475 P.3d 776 (Nev. 2020) (unpublished table decision)	Bankr. D. Nev.	Declined in part	State statutory interpretation; torts	Questions not sufficiently determinative
Parsons v. Colts Mfg. Co. LLC, 499 P.3d 602 (Nev. 2021)[398]	D. Nev.	Declined in part	State statutory interpretation; torts	Remaining question mooted by answers provided
Echeverria v. Nevada, 495 P.3d 471 (Nev. 2021)	D. Nev.	Declined in part	State statutory interpretation; employment	Questions not sufficiently determinative
Mack v. Williams, 522 P.3d 434 (Nev. 2022)	D. Nev.	Declined in part	State constitutional law	Questions not sufficiently determinative; lack of necessary facts

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
In re VCSP, LLC, 367 P.3d 785 (Nev. 2010) (unpublished table decision)	Bankr. D. Nev.	Dismissed on request to withdraw	Property; state statutory interpretation[399]	N/A
Wynn Las Vegas, LLC v. Robertson, 373 P.3d 975 (Nev. 2011) (unpublished table decision)	D. Nev.[400]	Dismissed for failure to appear	Torts[401]	N/A
Gibbs-Bolender v. CAG Acceptance, LLC, 131 Nev. 1283 (2015) (unpublished table decision)	D. Nev.	Dismissed on request to withdraw	State statutory interpretation; contracts[402]	N/A
Squires v. Cent. Mortg. Co., 131 Nev. 1349 (2015) (unpublished table decision)	Bankr. D. Nev.	Dismissed on request to withdraw	Property[403]	N/A
Wells Fargo Bank, N.A. v. MEI-GSR Holdings, LLC, 391 P.3d 759 (Nev. 2017) (unpublished table decision)	D. Nev.	Administratively closed on request to withdraw	State statutory interpretation; property	N/A
Cutts v. Richland Holdings, Inc., 459 P.3d 226 (Nev. 2020) (unpublished table decision)	9th Cir.	Dismissed	State civil procedure[404]	N/A

Table 3 – Alabama Certification Requests (Jan. 2000–June 2023)

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Wyatt v. BellSouth, Inc., 757 So. 2d 403 (Ala. 2000)	M.D. Ala.	Answered	Employment; contracts	N/A
Peachtree Cas. Ins. Co. v. Sharpton, 768 So. 2d 368 (Ala. 2000)	M.D. Ala.	Answered	Insurance; state statutory interpretation	N/A
Smith v. Atkinson, 771 So. 2d 429 (Ala. 2000)	M.D. Ala.	Answered	Torts; evidence	N/A
Robinson v. Boohaker, Schillaci & Co., P.C., 767 So. 2d 1092 (Ala. 2000)	N.D. Ala.	Answered	Employment; contracts	N/A
Allstate Ins. Co. v. Hugh Cole Builder, Inc., 772 So. 2d 1145 (Ala. 2000)	M.D. Ala.	Answered	Insurance	N/A
In re Long Distance Tel. Litig., 783 So. 2d 800 (Ala. 2000)	N.D. Ala.	Answered	State statutory interpretation	N/A
Hinton ex rel. Hinton v. Monsanto Co., 813 So. 2d 827 (Ala. 2001)	N.D. Ala.	Answered	Torts; state civil procedure	N/A
Sisson v. State Farm Fire & Cas. Co., 824 So. 2d 708 (Ala. 2001)	N.D. Ala.	Answered	Insurance	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Royal Ins. Co. of Am. v. Whitaker Contracting Corp., 824 So. 2d 747 (Ala. 2002)	11th Cir.	Answered	Contracts; torts	N/A
Dillard v. Baldwin Cnty. Comm'n, 833 So. 2d 11 (Ala. 2002)	M.D. Ala.	Answered	State statutory interpretation; local government	N/A
Fed. Ins. Co. v. Travelers Cas. & Sur. Co., 843 So. 2d 140 (Ala. 2002)	11th Cir.	Answered	Insurance	N/A
Porterfield v. Audubon Indem. Co., 856 So. 2d 789 (Ala. 2002)	M.D. Ala.	Answered	Insurance	N/A
Morgan v. Farmers & Merchs. Bank, 856 So. 2d 811 (Ala. 2003)	N.D. Ala.	Answered	UCC	N/A
Tillman v. R.J. Reynolds Tobacco Co., 871 So. 2d 28 (Ala. 2003)	11th Cir.	Answered	Torts	N/A
Am. Nat'l Red Cross v. ASD Specialty Healthcare, Inc., 888 So. 2d 464 (Ala. 2003)	S.D. Ala.	Answered	State statutory interpretation	N/A
Royal Ins. Co. of Am. v. Thomas, 879 So. 2d 1144 (Ala. 2003)	N.D. Ala.	Answered	Insurance	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Jefferson Cnty. v. Acker, 885 So. 2d 739 (Ala. 2003)	N.D. Ala.	Answered	Tax; local government	N/A
Walls v. Alpharma USPD, Inc., 887 So. 2d 881 (Ala. 2004)	N.D. Ala.	Answered	Torts	N/A
Byrd v. Dillards, Inc., 892 So. 2d 342 (Ala. 2004)	11th Cir.	Answered	Employment; state statutory interpretation	N/A
Schoenvogel ex rel. Schoenvogel v. Venator Grp. Retail, Inc., 895 So. 2d 225 (Ala. 2004)	N.D. Ala.	Answered	State statutory interpretation; evidence; state constitutional law	N/A
Shrader v. Emps. Mut. Cas. Co., 907 So. 2d 1026 (Ala. 2005)	11th Cir.	Answered	Insurance	N/A
Pope v. Gordon, 922 So. 2d 893 (Ala. 2005)	Bankr. N.D. Ala.	Answered	State statutory interpretation; state civil procedure	N/A
Carpenter v. Tillman, 948 So. 2d 536 (Ala. 2006)	S.D. Ala.	Answered	Torts; state statutory interpretation	N/A
Trott v. Brinks, Inc., 972 So. 2d 81 (Ala. 2007)	N.D. Ala.	Answered	Insurance; state statutory interpretation	N/A
Horton v. Alexander, 977 So. 2d 462 (Ala. 2007)	M.D. Ala.	Answered	State statutory interpretation	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Atl. Nat'l. Tr., LLC v. McNamee, 984 So. 2d 375 (Ala. 2007)	N.D. Ala.	Answered	UCC; state statutory interpretation	N/A
Edwards v. Kia Motors of Am., Inc., 8 So. 3d 277 (Ala. 2008)	11th Cir.	Answered	State statutory interpretation	N/A
Sparks v. Total Body Essential Nutrition, Inc., 27 So. 3d 489 (Ala. 2009)	N.D. Ala.	Answered	Contracts/UCC; state statutory interpretation	N/A
Shoney's LLC v. MAC E., LLC, 27 So. 3d 1216 (Ala. 2009)	11th Cir.	Answered	Contracts; property	N/A
Holcim (US), Inc. v. Ohio Cas. Ins. Co., 38 So. 3d 722 (Ala. 2009)	11th Cir.	Answered	Torts; contracts	N/A
Jerkins v. Lincoln Elec. Co., 103 So. 3d 1 (Ala. 2011)	N.D. Ohio	Answered	Torts	N/A
Downey v. Travelers Prop. Cas. Ins. Co., 74 So. 3d 952 (Ala. 2011)	N.D. Ala.	Answered	Insurance	N/A
City of Prichard v. Balzer, 95 So. 3d 1 (Ala. 2012)	S.D. Ala.	Answered	State statutory interpretation	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Malfatti v. Bank of Am., N.A., 99 So. 3d 1221 (Ala. 2012)	B.A.P 9th Cir.	Answered	State civil procedure	N/A
Nationwide Mut. Ins. Co. v. Thomas, 103 So. 3d 795 (Ala. 2012)	N.D. Ala.	Answered; dissent would decline	Insurance	N/A
Travelers Cas. & Sur. Co. v. Ala. Gas Corp., 117 So. 3d 695 (Ala. 2012)	N.D. Ala.	Answered; dissent would decline	Insurance; environmental law	N/A
Nationwide Mut. Ins. Co. v. Wood, 121 So. 3d 982 (Ala. 2013)	N.D. Ala.	Answered	Contracts; insurance	N/A
State Superintendent of Educ. v. Ala. Educ. Ass'n, 144 So. 3d 265 (Ala. 2013)	11th Cir.	Answered	State statutory interpretation; election law	N/A
Wyeth, Inc. v. Weeks, 159 So. 3d 649 (Ala. 2014)	M.D. Ala.	Answered; dissent would decline	Torts	N/A
Rondini v. Bunn, 338 So. 3d 749 (Ala. 2021)	N.D. Ala.	Answered	Torts	N/A
Blackburn v. Shire U.S., Inc., No. 1210140, 2022 WL 4588887 (Ala. Sept. 30, 2022)	11th Cir.	Answered; dissent would decline in part	Torts	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Butler v. Ala. Jud. Inquiry Comm'n, 802 So. 2d 207 (Ala. 2001)	11th Cir.	Declined in full	State constitutional law; state civil procedure	Threshold issue obviated questions
Sustainable Forests, L.L.C. v. Ala. Power Co., 805 So. 2d 681 (Ala. 2001)	N.D. Ala.	Declined in full	State statutory interpretation; property	Threshold issue obviated questions
Palmore v. First Unum, 841 So. 2d 233 (Ala. 2002)	N.D. Ala.	Declined in full	Insurance; torts	Questions not sufficiently determinative; questions raise federal issue
Kendall v. Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., No. 1021934 (Ala. Sept. 18, 2003)	M.D. Ala.	Declined in full	Unknown	None given
Price v. Time, Inc., No. 1030687 (Ala. Mar. 29, 2004)	N.D. Ala.	Declined in full	Unknown	None given
Knezevich v. Michaels Inc., No. 1031012 (Ala. Apr. 21, 2004)	N.D. Ala.	Declined in full	Unknown	None given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Union Planters Bank, N.A. v. New York, 988 So. 2d 1007 (Ala. 2008)	11th Cir.	Declined in full	State statutory interpretation; property	Questions not sufficiently determinative; threshold issue obviated questions; lack of necessary briefing
Auto Owners Ins. Co. v. Bill Lunsford Const. & Dev., Inc., No. 1081803 (Ala. Nov. 19, 2009)	N.D. Ala.	Declined in full	Unknown	None given
Quezada v. Lefrere, No. 1081741 (Ala. Dec. 1, 2009)	11th Cir.	Declined in full	Unknown	Controlling precedent exists
Stewart Title Guar. Co. v. Shelby Realty Holdings, LLC, 83 So. 3d 469 (Ala. 2011)	N.D. Ala.	Declined in full	Insurance; property	Controlling precedent exists; lack of necessary briefing
Haynes ex rel. Haynes v. Reassure Am. Life Ins. Co., No. 1110267 (Ala. Dec. 15, 2011)	N.D. Ala.	Declined in full	Unknown	None given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Stewart v. United States, No. 1111584 (Ala. Oct. 23, 2012)	N.D. Ala.	Declined in full	Unknown	None given
Sawyer v. Collins, 129 So. 3d 1004 (Ala. 2013)	S.D. Ala.	Declined in full	State statutory interpretation	None given
Thyssenkrupp Steel USA, LLC v. United Forming, Inc., No. 1120875 (Ala. May 29, 2013)	S.D. Ala.	Declined in full	Unknown	None given
Johnson v. Conner, No. 1121178 (Ala. Oct. 31, 2013)	11th Cir.	Declined in full	Unknown	None given
Lewis v. Haskell, Slaughter, Young & Rediker, LLC, No. 1130923 (Ala. June 16, 2014)	11th Cir.	Declined in full	Unknown	None given
Thompson v. Miss. Valley Title Ins. Co., No. 1131049 (Ala. Sept. 16, 2014)	11th Cir.	Declined in full	Unknown	None given
Comeens v. HM Operating, Inc., No. 1140445 (Ala. Feb. 24, 2015)	N.D. Ala.	Declined in full	State civil procedure; business organizations[405]	None given
Bobo v. Tenn. Valley Auth., No. 1141023 (Ala. Aug. 24, 2015)	N.D. Ala.	Declined in full	Unknown	None given

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Hammonds v. Comm'r Ala. Dept. of Corrs., No. 1150800 (Ala. May 25, 2016)	11th Cir.	Declined in full	Unknown	None given
Essex Ins. Co. v. J&J Cable Constr., LLC, No. 1150819 (Ala. June 30, 2016)	M.D. Ala.	Declined in full	Unknown	None given
Lewis v. Moore, No. 1160893 (Ala. Sept. 7, 2017)	11th Cir.	Declined in full	Unknown	None given
Horizon Shipbuilding, Inc. v. Coastal Elec. Supply, LLC, No. 1180058 (Ala. Oct. 31, 2018)	Bankr. S.D. Ala.	Declined in full	Unknown	None given
Walker Reg'l Med. Ctr., Inc. v. McDonald, 775 So. 2d 169 (Ala. 2000)[406]	N.D. Ala.	Declined in part	Employment; state statutory interpretation	Remaining questions mooted by answers given
Christensen v. S. Normal Sch., 790 So. 2d 252 (Ala. 2001)	M.D. Ala.	Declined in part	Torts	Standards created in response to answered question control remaining questions

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Twin City Fire Ins. Co. v. Colonial Life & Accident Ins. Co., 839 So. 2d 614 (Ala. 2002)[407]	M.D. Ala.	Declined in part	Insurance; torts; contracts; state civil procedure	Remaining questions mooted by answers given
Jones v. Hooks, 850 So. 2d 1228 (Ala. 2002)	N.D. Ala.	Declined in part	Executive power; state criminal law	Some of remaining questions mooted by answers given; no reason given for declining others
Spain v. Brown & Williamson Tobacco Corp., 872 So. 2d 101 (Ala. 2003)	11th Cir.	Declined in part	Torts	Ill-suited procedural posture
Fike v. Peace, 964 So. 2d 651 (Ala. 2007)[408]	N.D. Ala.	Declined in part	Torts	Remaining questions mooted by answers given
United States v. Parvin, 31 So. 3d 101 (Ala. 2009)	N.D. Ala.	Declined in part	State criminal law	Remaining questions raise federal issue

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Heatherwood Holdings, LLC v. First Com. Bank, 61 So. 3d 1012 (Ala. 2010)	Bankr. N.D. Ala.	Declined in part	Property	Controlling precedent exists; ill-suited procedural posture
WM Mobile Bay Env't Ctr., Inc. v. City of Mobile Solid Waste Auth., 355 So. 3d 841 (Ala. 2021)[409]	11th Cir.	Declined in part	State statutory interpretation; property; municipal law	Remaining questions mooted by answers given
Dionne v. Aultman, No. 1992388 (Ala. Sept. 26, 2000)	N.D. Ala.	Closed (unspecified)	Unknown	N/A
Bailey v. Am. Gen. Life Ins. Co., No. 1020942 (Ala. July 1, 2003)	M.D. Ala.	Dismissed on joint stipulation	Unknown	N/A
In re B&M Props., LLC, No. 1050240 (Ala. Aug. 17, 2006)	Bankr. N.D. Ala.	Dismissed after withdrawal of certified question	Unknown	N/A
Pechlin v. Novartis Pharms. Corp., No. 1140054 (Ala. Dec. 15, 2014)	4th Cir.	Disposed (unspecified)	Unknown	N/A

Case	Certifying Court	Disposition	Substantive Topic(s)	Reason(s) for Declining
Arrow Elecs., Inc. v. Liberty Mut. Ins. Co., No. 1200013 (Ala. Jan. 20, 2021)	C.D. Cal.	Disposed (unspecified)	Unknown	N/A
King v. Moon, No. SC-2023-0241 (Ala. Aug. 7, 2023)	N.D. Ala.	Declined following settlement	Unknown	N/A

361. Consolidated with *McNamara v. Rittman*, 838 N.E.2d 640 (Ohio 2005).
362. *See* Platte v. Ford Motor Co., No. 00-CV-7171, 2002 WL 32091267, at *2 (N.D. Ohio June 18, 2002). This Appendix cites the federal court certification order or the state supreme court docket when the state supreme court opinion does not indicate either what substantive issues were involved in the certified questions or which federal court certified the questions.
363. *In re* Miller, No. 2001-2173 (Ohio Dec. 14, 2001).
364. Wojcik v. Option One Mortg. Corp., No. 2001-2125 (Ohio Dec. 5, 2001).
365. *See* Westfield Ins. Co. v. Galatis, 797 N.E.2d 1256 (Ohio 2003).
366. *See* Richey v. Mitchell, 395 F.3d 660 (6th Cir. 2005).
367. *See* Dunn v. Ethicon, Inc., 167 F. App'x 539 (6th Cir. 2006).
368. *See* Nat'l Union Fire Ins. Co. of Pittsburgh v. Cavins, No. 03-CV-878, 2006 WL 623773, at *4 (M.D. Ala. Mar. 9, 2006).
369. *See* Luckey v. Butler Cnty., No. 2006-2184 (Ohio Nov. 27, 2006).
370. *See* HoneyBaked Foods, Inc. v. Affiliated FM Ins. Co., No. 08-CV-01686, 2011 WL 834067 (N.D. Ohio Mar. 4, 2011).
371. *See* Fireman's Fund Ins. Co. v. Hartford Acc. & Indem. Co., No. 03-CV-7168, 2011 WL 3794334 (N.D. Ohio July 15, 2011).
372. *See* Antioch Co. Litig. Tr. v. Morgan, 633 F. App'x 296 (6th Cir. 2015).
373. *See* State *ex rel.* DeWine v. GMAC Mortg. L.L.C., 951 N.E.2d 1044 (Ohio 2011) (unpublished table decision).
374. *See* Wells Fargo Bank, N.A. v. Allstate Ins. Co., No. 2015-1252 (Ohio July 30, 2015).
375. *See* Am. Mun. Power, Inc. v. Bechtel Power Corp., 21 N.E.3d 1113 (Ohio 2014) (unpublished table decision).
376. *See* Lowe v. Ransier, No. 2016-1256 (Ohio Aug. 22, 2016).
377. *See* Cranfield v. State Farm Fire & Cas. Co., No. 2016-1840 (Ohio Dec. 14, 2016).
378. *See* Perry v. Allstate Indemn. Co., No. 2016-1835 (Ohio Dec. 13, 2016).
379. Not counted as a denial.
380. Not counted as a denial.
381. *See* Westfield Ins. Co. v. Galatis, 797 N.E.2d 1256 (Ohio 2003).
382. Not counted as a denial.
383. Not counted as a denial.
384. *See* Est. of Monahan v. Am. States Ins. Co., 756 N.E.2d 114 (Ohio 2001) (unpublished table decision).
385. *See* Nat'l Indemn. Co. v. Ryerson, 777 N.E.2d 268 (Ohio 2002) (unpublished table decision).
386. *See* Wyser-Pratte Mgt. Co. v. Telxon Corp., 795 N.E.2d 678 (Ohio 2003) (unpublished table decision).
387. *See* Wrinn v. Johnson, 315 F. App'x 560 (6th Cir. 2009).
388. *See* Berry v. Lucas Cty. Bd. of Comm'rs., 932 N.E.2d 337 (Ohio 2010) (unpublished table decision).
389. *See* Corbett v. Beneficial Ohio, Inc., 986 N.E.2d 28 (Ohio 2013) (unpublished table decision).
390. *See* Lincoln Elec. Co. v. Travelers Cas. & Sur. Co., 994 N.E.2d 461 (Ohio 2013) (unpublished table decision).
391. *See* Ohioans Against Corp. Bailouts, L.L.C. v. LaRose, 136 N.E.3d 522 (Ohio 2019) (unpublished table decision).
392. *See* McIntire v. Whirlpool Corp., No. 2021-0930 (Ohio July 28, 2021).
393. *See* Ord. Certifying Questions of L. to the Nev. Sup. Ct., *In re* Goeden, No. 03-23262 (Bankr. D. Nev. Aug. 13, 2007).
394. *See* Ord. Declining to Answer Certified Questions, *In re* Goeden, No. 49992 (Nev. Nov. 1, 2007).
395. Not counted as a denial.
396. Not counted as a denial.
397. Not counted as a denial.
398. Not counted as a denial.
399. *See In re* VCSP, LLC, No. 55351 (Nev. Jan. 29, 2010).
400. *See* Wynn Las Vegas, LLC v. Robertson, No. 56596 (Nev. Aug. 13, 2010).
401. *See id.*
402. *See* Gibbs-Bolender v. CAG Acceptance, LLC, No. 67454 (Nev. Feb. 24, 2015).

403. *See* Squires v. Cent. Mortg. Co., No. 66120 (Nev. July 21, 2014).
404. *See* Cutts v. Richland Holdings, Inc., No.79225 (Nev. Feb. 27, 2020).
405. *See* Comeens v. HM Operating, Inc., No. 14-CV-00521, 2015 WL 12979134, at *1 (N.D. Ala. Jan. 20, 2015).
406. Not counted as a denial.
407. Not counted as a denial.
408. Not counted as a denial.
409. Not counted as a denial.