

Appellaris

MAGAZINE

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Appealing for all time.

NEW EVIDENCE, OLD REMEDIES



roses for all the fallen judgments

Altman, J.

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JUDGMENTS DO NOT EXIST

By: Jonathan Altman

The consequences of a legal ruling doubtlessly manifest in the physical world—just ask any prisoner—but the ruling itself no longer does. Some might point to the piece of paper on which a judgment is written and say it is there that the judgment exists, but this cannot be correct. A court order or decree setting forth a ruling which the clerk records is only an acknowledgement that the judgment exists, not an incarnation of the judgment itself.

Otherwise, if a judgment really existed on the paper upon which it was written, this would assumedly mean that a judgment can be nullified merely by destroying the original copy. Doing so, of course, does not have any such effect. A physical piece of parchment thus does not represent the incarnation of a judgment through which it lives.

When a judgment is overturned by an appellate court today, the actual “overturning” occurs through a simple declarative statement. In other words, the way appellate courts effectuate the invalidation of a judgment is through declaring in their written opinion that the judgment is “reversed.” Because of this, reversals by appellate courts are self-effectuating. In previous centuries, however, a judgment was not merely an abstract concept that could be changed simply by declaring it so. It used to be that a judgment really did exist in parchment form, and therefore if it were to be reversed or vacated, the prothonotary would have to physically retrieve the judgment from the court’s index and either modify or purge it, depending on the court’s instructions.

The ease with which judgments are reversed today demonstrates their ontological status as mere abstractions rather than any concrete reality. This modern concept of simply declaring that a ruling “is” reversed in order for it to actually “be” reversed means that judicial rulings exist only as an idea—that they are imaginary. If a judgment can be altered with a mere proclamation, then it may not even be necessary to appeal it in order to be free from its constraints. Just free your mind instead.

THE BEST NEW EVIDENCE

By: James Valentin, Esq.
Guest author

Judges are expectedly hesitant to tamper with old rulings. Surely this is the case when a ruling is being reviewed by a higher court upon direct appeal, but it is most true when the ruling at issue has already been affirmed by a higher court, and now the litigant is seeking that the original jurisdiction set it aside after remand. Attempting to use an ancient tool such as a writ of coram nobis makes the task of obtaining collateral relief even harder than it already is. Most rules of civil and criminal procedure throughout the United States allow litigants to present new evidence attacking a previous judgment using a simple “motion to vacate based on after-discovered evidence,” which would trigger a substantially identical inquiry as would a coram nobis action under older practices. If someone has to resort to bringing a coram nobis action, it means the case is already unusual before it has even come before the court upon the collateral review.

With all of this in mind, one might ask: When it comes to challenging a judgment collaterally, what is the best new evidence? The answer is actually rather uncomplicated. The one claim that most consistently grabs a judge's attention in my experience is that of actual innocence. Whether the judgment at issue is criminal or civil, I have learned from my own representative matters that involved collateral attacks that the most reliable and persuasive new evidence—the one most likely to lead to a successful result—is evidence that entails proof of innocence.

It is important to remember that collateral relief is a drastic remedy, this makes it scary to many judges, who are usually fearful of “rocking the boat.” Only the most clear, unequivocal, and egregious of circumstances could compel a judge to entertain such a radical and irregular pleading as a *coram nobis* petition; the petition has to be so compelling as to demonstrate not just that a judgment had been wrongful but that its continued existence would cause an injustice so offensive to the judge's sense of what is right that he literally cannot help but act. Only if after the conclusion of a hearing on a *coram nobis* petition the judge then is completely persuaded that the original judgment had been rendered upon invalid facts, and that the opposite outcome would have been compelled had the new evidence been available to the original trier of the facts, then—and only then—could one ever expect a judge to issue a writ of error coram nobis that sets aside the judgment accordingly.

CORAM NOBIS

By: Jonathan Altman

The writ of error coram nobis is an ancient common law holdover that few lawyers still think about. It is a hornbook form of collateral action that has been vital in facilitating the exoneration of many innocent people since its origins in colonial England, and has long been recognized in states across the country for no less than the last two hundred years. Some states in their unique procedures now call it different things, but all provide some mechanism for obtaining the equivalent of Coram Nobis relief. It is a classical common law remedy that allows a person against whom a judgment was entered in the past to be freed from its constraints where new facts have come to light which would have prevented the original outcome. The writ has been vital

in facilitating the exoneration of many innocent people, which is why it remains available where the statutes in force provide no functionally equivalent recourse. Lawyers ought to know what it is, because the writ of coram nobis has an enormously gainful utility.

Indeed, coram nobis is a remedy that allows people against whom a judgment has been entered, particularly those who have been wrongfully convicted, to present newly acquired evidence which would render the conviction or other judgment factually invalid. When this writ is issued, it has the effect of nullifying the original ruling *ab initio*, as if it never happened, just the same as if an appellate court overturned the decision on direct appeal. This is why the Writ of Coram Nobis

is also known as the “Writ of Error,” but few legal professionals know that. The phrase “Coram Nobis” is Latin for “before us,” and can only be issued by the original tribunal that entered the conviction or judgment at issue; if a litigant wishes for an appellate court to review their new evidence instead, this is called “Coram Vobis.” Coram Nobis has grown increasingly extraordinary in law as a result of modern post-trial motion practice and new statutes which provide a recourse functionally equivalent to Coram Nobis and thus subsume the Writ in their respective jurisdiction.

On the question of whether the writ remains available where none of those recourses, or any other functionally equivalent recourse, is recognized, federal jurisprudence leaves no ambiguity. In matters where there exists no recourse functionally equivalent to Coram Nobis, the availability of the writ as a

legal remedy has only ever been recognized over again at each instance of judicial review in explicit terms. One can look at the Writ of Coram Nobis as a sort of spare tire; most of the time you will not need it, but when you find yourself in a situation where you do need it—you really need it.

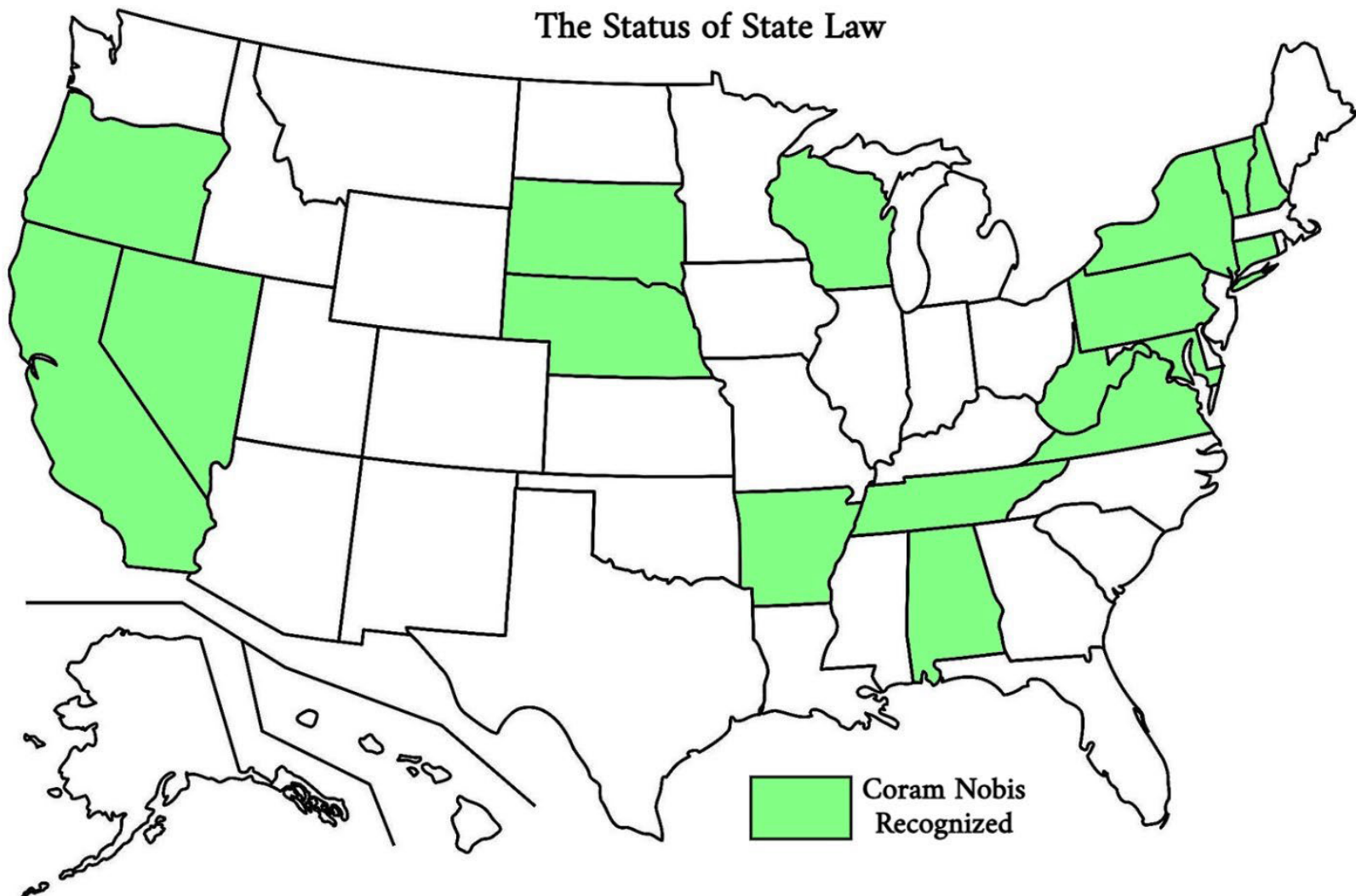
Legal Standard

To obtain a writ of coram nobis, the elements which generally must be satisfied for the writ to be issued are as follows: (1) There exists facts extrinsic of the record, unknown at the time of the judgment’s rendition; (2) that such facts could not have been obtained through the exercise of reasonable diligence at the time of the judgment’s rendition; and (3) had they been known at the time of the judgment’s rendition, would have compelled a different result. These three issues constitute the traditional standard for coram nobis relief,

though the exact necessities that a petition seeking the writ must fulfill do fluctuate by state. For example, in Pennsylvania, “the writ of error coram nobis may not be issued on the petition of one who was convicted in a criminal prosecution simply because later some witness offers to change or recant the testimony which he gave on the trial which

resulted in the conviction of the petitioner.” Other states, however, have no such rule, and the writ may be granted upon the mere recantation of a witness. There are, of course, also states which have abolished the writ of coram nobis altogether in favor of more modern remedies which provide litigants with an equivalent recourse.

Map of Availability



THE WRIT OF AUDITA QUERELA

By: Jonathan Altman

Audita querela is one of the most mysterious of all the common law writs that still exist in state jurisdictions. Like coram nobis, it is a collateral remedy which is granted on the basis after-acquired evidence, but audita querela additionally can be issued on the basis of a new legal defense affecting the original judgment which had not been available previously. The key contrast between audita querela and coram nobis is that the latter is a mechanism for vacating a judgment, whereas the former is a mechanism for nullifying the consequences of a judgment such as to prevent a creditor from enforcing a monetary award entered against a debtor—audita querela does not set a judgment aside.

Judicial decisions on the subject of this writ are so scarce themselves that only the states where this writ has been expressly abolished can be identified; our research reveals not a single appellate opinion in any state which purports to explicitly recognize *audita querela* as a currently cognizable form of action. Instead, they either simply hold that the writ is no more, or they go the reservist and anticlimactic route and simply hold that it remains unclear whether the writ still exists under state law or practice. But one thing that is certainly clear everywhere is that if there is any state law in force which provides a recourse functionally equivalent to *audita querela*, then the former is subsumed by the latter. The ambiguity is where there exists no other remedy under state law and *audita querela* would be the only avenue for relief. Only in the particular legal contexts where this is in fact

the case (mainly civil matters), there are some states that have not explicitly abolished this writ and leave open the possibility of its issuance where circumstances might happen to strongly warrant the same.

Legal Standard

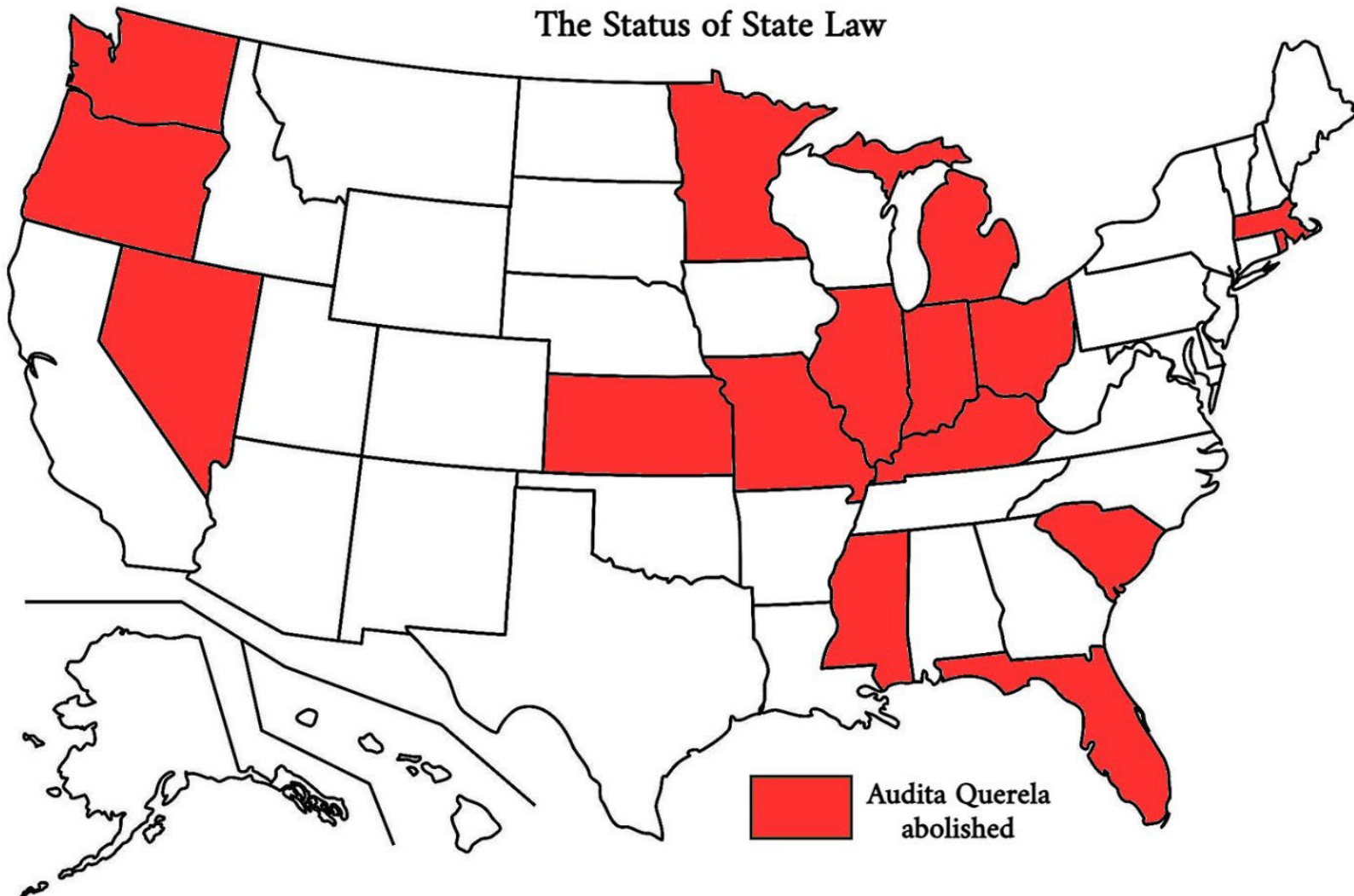
Although the exact standard is far less well-established, it is assumedly the case that a litigant seeking a writ of *audita querela* would have to prove the same criteria that the writ of *coram nobis* entails, unless a new legal defense is being raised, in which case the necessity of proving an error of fact is substituted with the necessity for proving an error in law. Either way, the petitioner would still have to show that the new argument or evidence was “unknown and unknowable” at the time of the original judgment’s rendition. The best chance a person has at obtaining this writ would be in the original jurisdiction, because attempting to persuade

an appellate panel into reversing a trial court's refusal to grant the writ would be a uniquely difficult exercise. Given that audita querela is so unusual, someone who is actually seeking to successfully secure the writ would likely have to go further and demonstrate an exceptional injustice that will ensue if the court withheld audita querela

relief—an injustice so shocking to the judge's conscience as to motivate them to sign their name on a document as radical as a writ of audita querela. Any lawyer who can claim to have obtained such a writ even once would bear an extraordinarily special distinction that few have ever had the pleasure to know.

Availability

The Status of State Law



WHY WRITS MATTER

By: Jonathan Altman

In modern legal practice and procedure, if a document bears the heading “order” and has been signed by a judge, then it is usually sufficient to have full force and effect. As a matter of legal mechanics, however, there are certain things which a mere “order” does not have the power to do, and which make “writs” necessary, even in the present age. Certain judicial acts require this more potent instrument. A trial judge, for instance, cannot simply sign an order purporting to vacate a judgment if it has been affirmed by an appellate court, because to do so would be to overrule the appellate court, something which it lacks the

authority to do. The only way an original jurisdiction could properly set aside a judgment mechanically after it has been affirmed by a higher court is by issuing a writ of error, which, as we have established, is a document that not merely orders a judgment set aside, but articulates a material error of fact afflicting the original judgment that renders it invalid and accordingly remedies the fundamental defect.



Writs developed historically as formal commands under the seal of the monarch (in British Commonwealth realms) that signaled a sovereign power to direct courts, officers, or other individual to undertake or refrain from some sort of action. These are called “prerogative” writs, the typical form a writ takes, and they are used to command another arm of government. Over the centuries, the emphasis on their royal origin has faded, particularly as they were transposed into the American legal system which did not involve a monarch, but nevertheless, their continued use in modern legal systems remains necessary as matter of legal mechanics in order to perform some judicial acts that require more than just a routine signature from a judge. They accomplish extraordinary tasks that an ordinary order lacks the ability to do. Some actions for a writ such as an action in mandamus can now be brought as a standard complaint rather than a “petition,” but others such as those seeking *coram nobis or audita querela* must still be brought in classical form.



**Herein fail not, and have you then
and there this Writ.**

ABOUT US

Appellaris Magazine is a legal publication dedicated exclusively to post-trial topics that was started in 2023 by Jonathan Altman, who was then an undergraduate at Thomas Jefferson University. The digital edition of the magazine that is available for free at appellaris.com has continually grown in readership since its beginning while its print edition is distributed in limited quantities to local law libraries for distribution on its newsstand. Each issue features a guest author who has some wisdom to impart on the particular subject about which they are writing. The rest of the articles are written by Jonathan himself, on typically novel topics, as well as with always-original (and sometimes provocative) theses.

Jonathan Altman

Editor-in-Chief