In the Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2015-0077
Plaintiff-Appellant,	:	On Appeal from the Marion County
v.	:	Court of Appeals, Third Appellate District
ROBERT PITTMAN,	:	Court of Appeals
Defendant-Appellee.	:	Case No. 9-13-65

BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL MICHAEL DEWINE IN SUPPORT OF APPELLANT STATE OF OHIO

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

INTRODUCTION

The General Assembly has decided that those who evade child support obligations should face meaningful consequences. The criminal non-support statute, R.C. 2919.21(B), makes it a felony to "fail to provide support as established by court order to, another person whom, by court order or decree, the person is legally obligated to support." Robert Pittman failed to pay more than $34,000 in court-ordered support for his two children. When the two children turned 18, the Marion County Court of Common Pleas, Family Division, issued a new order for Pittman to pay the support obligation that he had yet to satisfy. When he again failed to make payments for the support of his children, he was indicted for non-support of dependents in violation of R.C. 2919.21(B).

After repeatedly failing to support his children, Pittman now seeks to escape the consequences for his failure by arguing that R.C. 2919.21(B) applies only to *forward-looking* child support orders that exist so long as his children were under 18, not the arrearage order issued by the common pleas court for his *backward-looking* obligations. But Pittman's ongoing obligation to support his children is not so easily cast aside. His obligation to support his two children ends when he pays that obligation, not merely when they turn 18. Pittman cannot escape responsibility simply because he is not accruing any forward-looking support obligations; his obligation to provide support for backward-looking obligations continues until paid.

That conclusion flows from the plain text of the statute, including the meaning derived from common features of support obligations and the General Assembly's explicit inclusion of arrearages when defining support obligations in another statute. The conclusion also naturally follows from the structure and purposes of the non-support statute. The statute creates a strong incentive to fulfill support obligations, even after they are due. That incentive is fatally

weakened if a calculating parent stops paying support as a child nears age 18 because he knows that the non-support statute will not reach him once the child is emancipated.

The courts below misread the statute when they terminated the case against Pittman under the criminal non-support statute. Therefore, this Court should reverse.

STATEMENT OF AMICUS INTEREST

As Ohio's chief law officer, the Attorney General has a keen interest in ensuring that Ohio's prosecutors can enforce the State's criminal laws. *See* R.C. 109.02. A decision by this Court affirming the Third District would meaningfully limit the reach of Ohio's criminal laws that buttress Ohio's child-support system and would undercut the financial security of Ohio's children.

The Ohio Attorney General also has an interest in this case because he routinely represents the Ohio Department of Job and Family Services, the agency charged with oversight of the State's child-support system. The Department of Job and Family Services is invested in maintaining strong incentives for parents to satisfy their child-support obligations. The criminal sanctions for failing to pay child support are one aspect of a statewide enforcement system that seeks to ensure the financial wellbeing of children in Ohio.

STATEMENT OF THE CASE AND FACTS

Appellee Robert Pittman failed to pay more than $34,000 in child support for his two children. *State v. Robert Pittman*, 2014-Ohio-5001 ¶ 3 (3d. Dist.) ("App. Opp."). In 1988, the Marion County Court of Common Pleas, Family Division, ordered Pittman to pay child support "until the children had completed high school or were otherwise emancipated." *Id.* ¶ 2. The children were emancipated in 2006, but Pittman had not satisfied his support obligation. "At that time, an arrearage order in the amount of $34,313.45 was entered against Pittman for the child support he had failed to previously pay." *Id.*

Despite the arrearage order, Pittman still did not pay for the support of his children. In July of 2009, he was indicted on nine counts of nonsupport in violation of the non-support statute, felonies of the third and fourth degree. *Id.* ¶ 5. According to that statute, no person shall "fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support." R.C. 2919.21(B).

The Marion County Court of Common Pleas dismissed all counts against Pittman. After dismissing seven of nine counts for speedy-trial issues, the court dismissed the remaining two counts, holding that Pittman could not be prosecuted under the non-support statute for failing to pay the arrearage order for past unpaid child support. *Id.* ¶¶ 9, 13. The court reasoned that the clause in the non-support statute, "is legally obligated to support," means that at the time of the failure to pay support, there "must be a current obligation of support," *id.* ¶ 13, that is, an ongoing, *forward-looking* obligation.

The State appealed only the court's dismissal of the final two counts, and assigned error to the trial court's reading of the non-support statute. The Third District affirmed. It reasoned that the non-support statute requires that a defendant be under a "current legal obligation to support his children at the time the State filed its indictment." *Id.* ¶ 19. Because Pittman was indicted for failing to pay arrearages after his children had been emancipated, the appeals court determined that he was under "no current legal obligation" to his children. *Id.* The Third District acknowledged that its reasoning departed from the path of the conflict case, *State v. Dissinger*, 2002-Ohio-5301 (5th Dist.), but found that case "unpersuasive because it relied on [a] . . . definition of 'child support order,'" in another statute. *Id.* ¶ 20 & n.4. The Third District certified the conflict and this Court accepted jurisdiction.

ARGUMENT

***Amicus Curiae*'s Proposition of Law:**

> *An arrearage-only child support order reflects an ongoing unmet child-support obligation that exposes the defendant to sanction under R.C. 2919.21(B).*

Robert Pittman violated the law when he failed to support his two children, and again broke the law when he failed to comply with the family court's order that he pay the obligations that he already owed. Nonetheless, he has so far avoided the consequences by arguing that his duty to pay for the support of his children ended the day they turned 18, even though he was more than $34,000 behind on his payments. He is wrong.

First, the text and structure of the statute encompass a failure to support a child by ducking an obligation to pay that support even after it stops accruing. Not paying a court-ordered arrearage *is* a failure to support. *Second*, adopting the Third District's judgment undercuts the purposes of the statute because it would encourage parents to stop paying as their children neared age 18, with the knowledge that they faced no enforceable sanctions under the statute for doing so. The Third District's judgment also undermines Ohio's child-support system because it will encourage earlier prosecutions, thereby reducing the ability of prosecuted non-custodial parents who are behind on child support to make future payments. *Finally*, no reason the Third District offered for its contrary reading of the statute is persuasive.

A. The plain text of the non-support statute shows that it includes non-payment of arrears.

It is undisputed that Pittman failed to provide support to his children despite a court order that he do so. The arrearage order required him to pay "the child support he had failed to previously pay." App. Op. ¶ 3. He did not do so. *See id.* ¶¶ 11-12. Nor is it disputed that he had been ordered to pay that support by the family court. *Id.* ¶ 3. Those undisputed facts are enough to move forward with the prosecution. Pittman and the Third District improperly add to

these requirements the element that Pittman's children were under age 18 at the time of the indictment. *See* App. Op. ¶ 19. That requirement clashes with the text of the statute.

The non-support statute prohibits non-payment by a defendant who "is legally obligated to support" another "as established by a court order." R.C. 2919.21(B). "In light of the clear import" of this language, the judicial duty "is to apply the statute" as written. *Panther II Transp., Inc. v. Seville Bd. of Income Tax Rev.*, 138 Ohio St. 3d 495, 2014-Ohio-1011 ¶ 16. Like any monetary obligation, court-ordered support ends only when it is satisfied. Pittman was ordered to support his children by court order. An order to pay money before the children's emancipation, and an arrearage order to pay that same money after emancipation, involve the same obligation. That Pittman's children were emancipated does not alter the analysis or Pittman's ongoing duty to pay. "Emancipation ends a [forward-looking] child support obligation, but it does not retroactively whisk away any arrearage that accumulated before emancipation." *United States v. Black*, 125 F. 3d 454, 468 (7th Cir. 1997) (affirming sentence for non-payment of support arrearage); *State v. Speck*, 2015-Ohio-682 ¶ 26 (8th Dist.) (non-support included some amounts due on child emancipated before indictment) (affirming conviction).

The conclusion that a support obligation includes a duty to obey a court order for arrears is reinforced by the definition of "duty of support" in another statute. Chapter 3115 says that the duty of support is "an obligation . . . to provide support . . . including an *unsatisfied obligation* to provide support." R.C. 3115.01(C) (emphasis added); *see also* R.C. 3115.01(W), (B), (T) (defining "support order" in terms of money for "current" or "arrears" support or "reimbursements"). These definitions flesh out the meaning of the support obligation. A parent

is "legally obligated to support" another when the parent has a forward-looking duty, is in arrears, or owes reimbursements.

Although these definitions apply directly to Chapter 3115, that is no barrier to using them as an aid to define an otherwise undefined term in another statute. *See, e.g.*, *Cablevision of the Midwest, Inc. v. Gross*, 70 Ohio St. 3d 541, 545 (1994) (borrowing definition from another Title as "illustrative of the General Assembly's use of language" even though the borrowed definition was "expressly limited" to a chapter in that other Title); *Braatz v. Braatz*, 85 Ohio St. 3d 40, 50 (1999) (Moyer, C.J., concurring and dissenting) (using definition "not specifically directed at either of the statutes at issue").

Borrowing from Chapter 3115 is even more appropriate here than the borrowing in *Cablevision* and *Braatz* because the statute at issue here itself references Chapter 3115 when it discusses convictions for failure to honor child-support orders. *See* R.C. 2919.21(G)(2) (listing, among others, child support orders entered under Chapter 3115). Indeed, the Fifth District used the definition of "child support order" in Chapter 3115 to conclude that an arrearage order "can be the basis of a prosecution under" the non-support statute *State v. Dissinger*, 2002-Ohio-5301 ¶ 12 (5th Dist.); *see also State v. Partee*, No. 07CAA05021, 2008-Ohio-59 ¶¶ 15, 18 (5th Dist.) (affirming conviction even though defendant "was supporting the child" who lived with him during the relevant months because he had a "continuing duty to pay any arrearages"; "only payments due would have been arrearages").

Context also supports reading the non-support statute as encompassing arrearages. *See, e.g., Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St. 3d 536, 2014-Ohio-2440 ¶ 22 (meaning derives from considering "all words and phrases in context"); R.C. 1.42. The phrase "is legally obligated to support" in that statute is not isolated; it is paired with the phrase "as established by

court order." R.C. 2919.21(B). It is thus irrelevant whether "is . . . obligated" could mean a duty to pay *unemancipated* children. The right question is whether someone is "legally . . . obligated" to pay as set forth in a "court order." A court order makes an arrearage a present duty of support. Reading the one phrase without the other wrongly ignores the context of the statute. *See, e.g.*, *In re Application of Ohio Power Co.*, 140 Ohio St. 3d 509, 2014-Ohio-4271 ¶ 26 (rejecting argument that "focuse[d] solely on" one phrase while ignoring the phrase "in context"); *cf. Cedar Fair, L.P. v. Falfas*, 140 Ohio St. 3d 447, 2014-Ohio-3943 ¶ 16 (rejecting argument that "relie[d] on reading the quoted words in isolation") (contract interpretation).

Courts in other States have also concluded that similar criminal non-support statutes reach today's failure to pay an order enforcing yesterday's obligations. In Wisconsin, a statute criminalizes non-payment of "'an amount which a person *is* ordered to provide for support of a *child*.'" *State v. Lenz*, 602 N.W. 2d 173, 176 (Wis. App. 1999) (quoting Wisconsin support statute) (emphasis added). A Wisconsin court flatly rejected the "argument that the statute criminalizes only the current nonsupport of minor children" because the "point is not the age of the child." *Id.* The court recognized that "the passage of time" did "not change the purpose and nature of the obligation that is the focus of [the statute]." *Id.* It reasoned that, because the "arrearage inevitably arose from [the] failure to provide . . . support, and . . . [was] directly and exclusively correlative to the court-ordered support obligation[,] . . . [i]ts character [was] unchanged by the passage of time, or by labeling it an arrearage." *Id.* at 177. So too, here.

Another court rejected as "simply wrong" the "contention that [the defendant was] not 'a person obligated to provide child support' within the meaning of [a similar] statute . . . because [p]arents may not escape their court-ordered duty to support their children merely by waiting until the children reach majority." *Howard v. Howard*, 387 N.W.2d 96, 97 (Wis. App. 1986)

(reversing lower court). The court found "no support for [the] position that [the statute] applies only to a parent whose child support obligation continues to accrue" and recognized that, although "the extent of [the] obligation [had] not grown since [the] children's emancipation . . . [the] obligation to pay past-due child support did not cease at that time . . . [and] remain[ed] unfulfilled." *Id.* The court held "that 'a person obligated' [under the statute] is a person obligated to make child support payments whether those payments are currently accruing, past due, or both. The State's . . . right to [recover money from the spouse] is not extinguished by the children's attainment of majority." *Id.* at 98.

An Indiana court recently reached a similar result. An Indiana statute reads: "A person who knowingly or intentionally *fails* to provide support to the person's dependent *child* commits nonsupport." Ind. Code Ann. § 35-46-1-5(a) (emphasis added)). Applying that statute, an appellate court affirmed a felony sentence for criminal non-support after a child's emancipation. *Lewis v. State*, No. 36A04-1309-CR-464, 2014 WL 1050778, at *1 (Ind. Ct. App. Mar. 18, 2014).

Cases like *Lenz*, *Howard*, and *Lewis* confirm that, while the *nature* of Pittman's support obligation changed when his children reached age 18, the obligation remained. From the day of emancipation forward, Pittman did not have an ever-increasing forward-looking obligation, but only a capped obligation to support by paying the money he had failed to pay during the children's minority. The obligation to pay remained an obligation to support. Three features of Pittman's obligation offer further evidence for this conclusion.

First, Pittman's money obligation, like all obligations, is a *present* duty even though it arose from *past* actions. Other examples confirm this: an unsatisfied judgment is a present duty even though it represents liability for a finished case, and a debt is a present duty despite arising

from a prior transaction. *See, e.g.*, *Smith v. Smith*, 168 Ohio St. 447, 453 (1959) (A trial court has "the power to make what is in effect a money judgment relating to the support of . . . minors . . . even though it loses custodial jurisdiction . . . upon [the child's] attainment of majority . . . . [The court] . . . retains jurisdiction to enforce the payment of the money judgment beyond that date, just as it retains continuing jurisdiction to enforce the payment of its judgments in causes other than those concerning domestic relations . . . ."). Pittman "is legally obligated" to pay the past-due amounts because a "court order" establishes that duty. R.C. 2919.21(B). That duty lasts until the order is satisfied. It is not extinguished as soon as the child turns 18. *Cf. In re Stoddard*, 248 B.R. 111, 117 (Bankr. N.D. Ohio 2000) (explaining dormancy and revivor provisions for Ohio judgment liens; only inaction and at least 26 years can extinguish a lien).

Second, the obligation to pay arrears according to a court order represents a current obligation because it operates like a reimbursement to Pittman's former wife for child-rearing expenses. A payment today, like a payment when Pittman should have made it to support his children during their childhood, will flow to Pittman's former wife. Because she is currently out-of-pocket the amount Pittman is under a court order to pay, Pittman has an obligation *today* to pay support as specified in a court order. As this Court has noted when affirming reimbursement under a "support agreement," the reimbursement would have been unnecessary "now" if the father had "performed his obligation as the separation agreement expressly stipulated." *Rand v. Rand*, 18 Ohio St. 3d 356, 359-60 (1985); *see also id.* at 360 (Celebrezze, C.J., concurring) (an agreement to pay school tuition "is an acceptable form of financial child support designed to partially *reimburse* the custodial parent for expenses incurred in rearing the child") (emphasis added); *McClure v. Woods*, No. CA89-12-033, 1990 WL 102362, at *2 (12th Dist. July 23, 1990) (holding that judgment rested on sufficient evidence "to justify the

retroactive support order obviously designed to *reimburse* appellee for the costs of necessities during [the past 12 years]") (emphasis added). The obligation to support represents a *current* duty because Pittman's former spouse is currently short money he should have paid in the past.

Other state courts agree that present orders for one spouse to reimburse another rest on the idea that the custodial spouse has made up for missing support payments during the child's lifetime. For example, the Indiana Supreme Court has said that "a custodial parent, whose children are now emancipated, is entitled to a presumption that he or she expended his or her own funds to offset any deficit caused by missing child-support payments." *Sickels v. State*, 982 N.E.2d 1010, 1014 (Ind. 2013) (reversing appeals court). That reimbursement was payable "despite the fact that the children were emancipated." *Id*. at 1015. Likewise, the Supreme Judicial Court of Maine recognized that a party who has paid support is "entitled to reimbursement" as long as "the payment is for the support of a dependent." *State v. Curry*, 420 A.2d 1224, 1226 (Me. 1980). Although reimbursement does not flow directly to the child, the recipient is the receiving end of another's duty of support to the child.

Finally, the default rule of retroactivity for support orders supports the position that Pittman's obligation is a current one. "Absent some special circumstance, an order of a trial court modifying child support should be retroactive to the date such modification was first requested. Any other holding might produce an inequitable result in view of the substantial time it frequently takes to dispose of motions to modify child support obligations." *O'Brien v. O'Brien*, 2004-Ohio-5881 ¶ 63 (5th Dist.) (citation and internal quotation marks omitted); *see Matter of Adoption of Braden*, No. C.A. L-85-191, 1985 WL 4696, at *5 (6th Dist. Dec. 27, 1985) ("father may be ordered to retroactively reimburse the mother for past child support payments"). Retroactivity recognizes that *today's* court-ordered support includes past-due

payments for *yesterday's* obligations. An obligation to support includes the obligation to make up for not paying before.

B. Both the structure and purpose of the non-support statute show that it encompasses non-payment of arrears.

The structure of the statute further supports a reading that would hold Pittman liable for his non-support. *See, e.g.*, *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St. 3d 549, 552 (2000) (examining "language, structure, and purpose" to interpret statute). The statute contains two primary prohibitions. Part A prohibits the failure to support, among other, a "child who is under" 18. R.C. 2919.21(A)(2). Part B prohibits, among other things, failure to provide support as "established by a court order." R.C. 2919.21(B). Why the different wording if the part B prohibition also terminates when the person is no longer a "child under" age 18? If the General Assembly had intended that the Part B prohibition end at age 18, it could have said so explicitly. *See, e.g.*, *State v. Cowan*, 101 Ohio St. 3d 372, 2004-Ohio-1583 ¶ 11 (rejecting interpretation that General Assembly "could have explicitly" embraced, but did not). If the General Assembly intended that different meaning, "it would not have been difficult to find language which would express that purpose." *Lake Shore Elec. R. Co. v. Public Utils. Comm'n*, 115 Ohio St. 311, 319 (1926).

The previously discussed Wisconsin court looked to similar factors when it rejected an argument similar to Pittman's. The court observed that a claim like Pittman's would be "more compelling if the legislature had used language it used elsewhere in defining child support . . . [such as,] 'the party no longer has a current obligation to pay child support . . . .'" *Lenz*, 602 N.W. 2d at 177 (quoting Wisconsin statute). As that court elaborated, the "legislature could have used that or similar language to indicate an intent to limit [the criminal non-support statute] to a current support obligation. It did not. We presume that the legislature chooses its terms

carefully and with precision to express its meaning." *Id*. So too, Ohio's General Assembly could have limited prosecutions under the non-support statute to those circumstances where the parent has a continuing, forward-looking obligation of support at the time of the indictment. It did not, and Pittman's prosecution was therefore proper.

Reading the statute to encompass Pittman's non-payment is also consistent with the purposes of the statute because criminal liability creates an incentive for payment that is not present from mere civil liability or contempt. A statute's purpose bears on its meaning along with the language itself. *See, e.g.*, *In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens*, 140 Ohio St. 3d 346, 2014-Ohio-3656 ¶ 12 ("Our role in cases of statutory construction is to determine legislative intent by looking to the language of the statute and the purpose to be accomplished by the statute."); R.C. 1.49 ("[I]n determining the intention of the legislature, [the Court] may consider among other matters: (A) The object sought to be attained . . . [and] (E) The consequences of a particular construction.").

Statutes like Ohio's criminal non-support law are designed "to assist spouses and children in directly procuring support and thereby preventing them from becoming public burdens, to punish the offense of failing to provide support, and, by the fear of punishment, to prevent the commission of such an offense." *State v. Berry*, 413 A.2d 557, 561 (Md. 1980); *see also State v. Lenz*, 602 N.W. 2d at 177 ("Child nonsupport is a pervasive problem, and the legislature has an overriding concern that parents not shirk their obligations to support their children. The statute is intended to deter long-term failures to provide support. Regardless of the child's age, prosecuting parents who have failed to meet their support obligations is consistent with this intent.").

The non-support statute reaches these goals when it encompasses situations like Pittman's. It provides a strong incentive for parents to pay their child support obligations, and ultimately helps ensure that children receive the support they need. Limiting enforcement of this law to *before* children are emancipated severely limits its effectiveness. In most cases, prosecuting an offender with minor children who are still accruing support expenses will make it less likely that the delinquent parent will be able to make payments in the future. Once the initial support period has ended, however, and a parent has failed to satisfy an arrearage, the non-support statute serves as a valuable last resort. The criminal penalty serves as a backstop for those situations where civil enforcement of child support orders fails. It makes no sense to limit that backstop to those with children under 18, or other situations where the child support obligation continues as a forward-looking duty. Nor does it make sense to encourage prosecutors to bring charges under the statute sooner than they would otherwise because those prosecutions might interfere with the defendant's ability to satisfy a support obligation.

The purpose of incentivizing payment with the threat of criminal penalties finds further support in this Court's holding that a court's inherent contempt power to enforce support obligations does not evaporate when the child reaches majority. "[T]he state has a strong interest in ensuring the enforcement of child support obligations. If a court's contempt power ended upon the child's emancipation, a recalcitrant parent would have a strong incentive to withhold payment entirely because of the increased difficulty in enforcing the child support order when the threat of imprisonment for contempt has been removed. Such a result would certainly contravene the state's interest in the aggressive enforcement of child support orders." *Cramer v. Petrie*, 70 Ohio St. 3d 131, 135 (1994). It would be odd to read the non-support statute more narrowly than the contempt power, which can also impose criminal sanctions for non-payment.

The purpose of both statutes is to remove the "strong incentive" of "recalcitrant parents" to stop paying support as a child nears age 18. *Id.* Both statutes avoid scenarios where a calculating parent could end support during a child's minority with the knowledge that criminal liability would be foreclosed as soon as the child reaches adulthood.

Several other states have reached a similar conclusion to *Cramer*. *See, e.g.*, *Griffin v. Reeve*, 416 N.W.2d 612, 616 (Wis. 1987) ("we conclude that the obligation to pay past due child support when the child reaches majority continues after the child reaches majority, and so long as that obligation imposed by court order continues, enforcement of that obligation by contempt continues"); *Johnson v. State*, 306 S.E.2d 756, 756 (Ga. App. 1983) ("There was an outstanding court order requiring appellant to pay weekly sums for the support of his minor child and appellant had refused to comply with that order while the child was a minor. The fact that the child reached majority did not divest the trial court of its power to assure compliance with its previously entered order."); *Ackerman v. Yanoscik*, 601 S.W.2d 72, 73 (Tex. Civ. App. 1980) ("It is clear from the trial court's conclusions of law that it dismissed the . . . actions solely because the child had reached the age of eighteen before the action was filed.") (reversing lower court). Ending criminal consequences for non-support as soon as a child reaches majority undermines the incentives those consequences provide for payment when due. Ohio's criminal non-support statute is not so easily manipulated.

C. The Third District's reasoning contradicts the text, structure, and purpose of the statute.

The Third District excused Pittman's non-payment on three bases, but none survives close scrutiny. It first read the phrase "is legally obligated to support" as meaning that the defendant must have a present, forward-looking obligation to a minor child. App. Op. ¶ 19. As explained above, that reading overlooks the better reading of the "obligated to support" language

in context, wrongly refuses to borrow from the definition of "duty of support" elsewhere in the Revised Code, and undermines the statute's purpose by offering evasive parents an easy way to avoid their obligations.

The Third District's comparison to language in a contempt statute fares no better because that language changes a background rule about contempt with no equivalent in the criminal law. The statute changes the background rule for contempt and lets courts know that they retain the power to use contempt for support orders even if the forward-looking support ends. The Third District drew the wrong lesson from the language in the contempt statute. The Third District cited the contempt statute's language that the contempt power continues "even if the duty to pay support has terminated," R.C. 2705.031(E), and concluded that the absence of similar language in the non-support statute means that it must be limited to cases where the defendant still has a forward-looking obligation to a minor child. App. Op. ¶ 22. But the contempt statute's language is needed to change a default rule about civil contempt that renders it unavailable when the underlying cases ends. Without that language, courts might conclude that the power to punish non-payment after a child turns 18 evaporates because the forward-looking support obligation ends. *See, e.g.*, *State ex rel. Corn v. Russo*, 90 Ohio St. 3d 551, 555 (2001) (noting "well established [rule] that where the parties settle the underlying case that gave rise to the civil contempt sanction, the contempt proceeding is moot, since the case has come to an end."). Until this Court settled the matter, some appellate courts had reasoned that, "after the children have attained the age of majority, the trial court cannot enforce a prior order for child support by exercising the power of contempt." *Thompson v. Albers*, 1 Ohio App. 3d 139, 141 (12th Dist. 1981). The language of the contempt statute removes any lingering doubt in light of the usual mootness rules for civil contempt that the power extends past the age of majority.

Indeed, the assurance about contempt power in R.C. 2705.031(E) is *consistent* with reading the criminal non-support statute as authorizing punishment if a defendant disobeys a backward-looking support order. That assurance is useful in the contempt statute because background principles create doubt about the power after a child reaches majority. No such doubt exists in the non-support statute that a parent still owes a duty when a court order requires payment of arrears. The Third District's approach creates unneeded disharmony between the contempt and non-support statutes. That transgresses the interpretive duty to construe "[a]ll provisions of the Revised Code bearing upon the same subject matter . . . harmoniously." *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St. 3d 234, 2009-Ohio-2610, ¶ 25. It makes little sense to read the contempt statute, which includes possible jail time, R.C. 2705.05(A), to extend into the children's adulthood while reading the criminal non-support statute as ending at adulthood.

Last, the Third District's turn to the rule of lenity does not support its conclusion that Pittman escapes criminal consequences because he was not indicted until after his children turned 18. The rule of lenity applies "at the end" of the statutory-interpretation process and is not "an overriding consideration of being lenient to wrongdoers." *State v. Stevens*, 139 Ohio St. 3d 247, 2014-Ohio-1932 ¶ 39 (Kennedy, J., concurring and dissenting) (internal quotation marks omitted). The liberal-construction directive in the rule resolves genuine "doubts" about meaning, *State v. Straley*, 139 Ohio St. 3d 339, 2014-Ohio-2139 ¶ 10, but should not operate to decriminalize all conduct prohibited by arguably ambiguous statutes. *Cf. Bernard v. Unemp. Comp. Rev. Comm'n*, 136 Ohio St. 3d 264, 2013-Ohio-3121 ¶ 12 (rejecting "outcome-determinative" use of liberal-construction statute); *Swallow v. Indus. Comm'n*, 36 Ohio St 3d 55, 57 (1988) (same). A Wisconsin court addressed this exact argument in the context of a non-

support statute and rejected overreliance on the rule. "The rule of lenity does not require us to give a penal statute the narrowest possible construction where to do so would be inconsistent with legislative intent. . . . We have already determined that the legislative intent of [the statute] is to deter nonsupport in part by permitting prosecution of cases involving arrearages, even after the child attains majority." *Lenz*, 602 N.W. 2d at 177. As we have shown, text, context, structure, and purpose all point to an interpretation that criminalizes Pittman's non-support. A turn to the rule of lenity is unneeded and the Third District erred by suggesting it was appropriate.

CONCLUSION

For the foregoing reasons this Court should answer the certified question yes and reverse the Third District's judgment.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Brief of *Amicus Curiae* Ohio Attorney General Michael DeWine in Support of Appellant was served on May 5, 2015, by U.S. mail on the following:

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