

In the  
**Supreme Court of Ohio**

STATE OF OHIO,	:	Case No. 2019-1813
	:	
Appellee,	:	On appeal from the Cuyahoga County
	:	Court of Appeals,
v.	:	Eighth Appellate District
	:	
NICHOLAS SMITH,	:	Court of Appeals
	:	Case No. 107899
Appellant.	:	

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**BRIEF OF AMICUS CURIAE OHIO ATTORNEY GENERAL DAVE YOST  
IN SUPPORT OF APPELLEE STATE OF OHIO**

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## INTRODUCTION

Ohio treats juvenile and adult criminals differently. The General Assembly has decided that, because juvenile criminals are generally more capable of being rehabilitated than their adult counterparts, the State should generally prioritize their rehabilitation over punishment. To that end, it has given juvenile courts exclusive jurisdiction over juvenile offenders. *See In re C.S.*, 115 Ohio St. 3d 267, 2007-Ohio-4919 ¶66; *see also* R.C. 2152.03. The General Assembly has also determined, however, that some juveniles—based on their crimes or their likelihood of being rehabilitated in the juvenile system—ought to be tried in adult criminal court. *State v. D.W.* 133 Ohio St. 3d 434, 2012-Ohio-4544 ¶9. Thus, Ohio law requires juvenile courts to transfer some cases to adult court, and it allows them to transfer others. *See* R.C. 2152.12.

Before transferring a case, a juvenile court must, among other things, conduct a hearing to determine whether there is probable cause to believe that the juvenile committed the charged offense. *See, e.g.*, R.C. 2152.12(A)(1)(a)(i). These “probable-cause hearings” are supposed to be narrow in scope; juvenile courts presiding over such hearings are supposed to verify the presence or absence of probable cause and nothing more. *See In re A.J.S.*, 120 Ohio St. 3d 185, 2008-Ohio-5307, ¶44. These are not adjudicatory hearings at which juvenile courts weigh the “merits of the competing prosecution and defense theories.” *State v. Iacona*, 93 Ohio St. 3d 83, 96 (2001). That task is reserved for the factfinder at trial. *Id.*

The appellant here, Nicholas Smith, seeks to dramatically expand the scope of probable-cause hearings. He argues that, when a juvenile court finds that some but not all charges are supported by probable cause, and then transfers the case to adult criminal court, the no-probable-cause finding is to be given preclusive effect. More precisely, he thinks the criminal court to which the juvenile's case is transferred has no jurisdiction over those charges for which the juvenile court found an absence of probable cause. On Smith's theory, the adult criminal court would be barred from entertaining such charges even if a grand jury later indicted the juvenile.

The Court should reject Smith's argument for at least two reasons.

*First*, Smith's argument is inconsistent with the plain text of R.C. 2152.12, the statute that governs when and how a juvenile court may transfer a case to adult criminal court. That statute says that, when a juvenile court transfers a case to adult court, it transfers *all* of the case—not just specific charges. *See* R.C. 2152.12(A)(1)(a) & (B). Thus, as a matter of statute, adult courts acquire jurisdiction over all charges to which the juvenile is subject, not only those charges with respect to which the juvenile court found probable cause.

*Second*, Smith's argument is inconsistent with this Court's precedent. The Court has affirmed that R.C. 2152.12 means what it says: transfer entails the transfer of *cases*, not *charges*. The Court has held that courts are “not empowered to split [a] case in two” by resolving some charges in adult court and others in juvenile court. *State v. D.B.*, 150

Ohio St. 3d 452, 2017-Ohio-6952 ¶15. Instead, “[i]f a juvenile court determines in a delinquency case that there is probable cause to support a single charge ... *the case* is subject to ... transfer.” *Id.*, ¶14.

Smith offers a handful of policy reasons to support his desired rule. *See* Smith Br.10–11, 24. But he provides no *legal* reason—constitutional or otherwise—why his policy-based arguments should prevail over statute and precedent. Because Smith’s arguments rest on policy grounds alone, they are better directed to the General Assembly. It is the legislature’s job to make policy. A courts’ job “is to apply the statute as it is written—even if [it] think[s] some other approach might accord with good policy.” *Johnson v. Montgomery*, 151 Ohio St. 3d 75, 2017-Ohio-7445 ¶15 (quoting *Burrage v. United States*, 571 U.S. 204, 218 (2014) (alterations omitted)). The Eighth District did its job below. This Court should affirm its judgment.

#### STATEMENT OF AMICUS INTEREST

The Attorney General is Ohio’s chief law enforcement officer and “shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested.” R.C. 109.02. He is interested in supporting courts throughout the State as they process juvenile offenders according to state law in an effort to protect the community and rehabilitate youth. The Attorney General also sometimes serves as special counsel in cases of significant im-



portance, including in cases that involve juveniles. In those cases, the Attorney General is directly involved in the application of Ohio's bindover statutes.

### STATEMENT OF THE FACTS AND CASE

1. When Nicholas Smith was sixteen years old, he and a companion robbed two women, Catherine Huff and Allison Reed, at gunpoint. They took Huff's purse and Reed's car keys, then fled with Reed's car. Feb. 9, 2018 Hearing Tr.15–16. Police had little trouble finding the thieves: Huff's purse held her cell phone, and the police quickly tracked its location. Unfortunately for Reed, Smith and his accomplice crashed her car while attempting to evade police. Feb. 9, 2018 Hearing Tr.18–19, 43–44, 66–67.

The State charged Smith in an eight-count complaint that it filed in juvenile court. *See State v. Smith*, 2019-Ohio-4671 ¶2 (8th Dist.) ("App.Op."). The charges against him included two counts of aggravated robbery, one count of grand theft, one count of felony theft, one count of misdemeanor theft, two counts of failure to comply, and one count of having a weapon while under disability. *Id.* The aggravated-robbery, grand-theft, and felony-theft charges all included firearm specifications. App.Op.¶2 n.1.

The juvenile court held a probable-cause hearing and found probable cause to believe that Smith committed some, but not all, of the charged offenses. App.Op.¶8. More specifically, the court found probable cause to believe that Smith had committed aggravated robbery and grand theft. But it concluded that there was no probable cause

to believe that Smith had committed felony theft, that he had failed to comply, or that he had possessed a weapon while under disability. *Id.* The court also found no probable cause to believe that Smith had a firearm on or about his person or under his control when the car and purse were stolen. *Id.*

Having found no probable cause to believe that Smith committed an offense *requiring* that he be bound over to adult criminal court, the juvenile court next considered whether Smith should be bound over as a discretionary matter. App.Op.¶9. As required by R.C. 2152.12(B)(3), the court held a hearing to determine whether Smith was amenable to rehabilitation in the juvenile system. *Id.* The juvenile court determined that he was not and, on that basis, transferred Smith's case to the criminal division of the Cuyahoga County Court of Common Pleas. *Id.*

After the juvenile court transferred Smith's case, a grand jury indicted him on the same eight counts for which he had originally been charged in juvenile court. App.Op.¶10. The grand jury also indicted Smith on one count of escape in connection with a separate incident. *Id.* Smith ultimately pleaded guilty to one count of aggravated robbery with a firearm specification, one count of grand theft, one count of failure to comply, and one count of escape. *Id.* The trial court sentenced Smith to a total of nine years' imprisonment. *Id.*

2. Smith appealed his conviction and sentence to the Eighth District Court of Appeals. He argued, among other things, that the common pleas court never acquired

jurisdiction over the charges that the juvenile court concluded were unsupported by probable cause. App.Op.¶¶11. The Eighth District rejected Smith’s argument. App.Op.¶¶19–33. It held that, when a case is transferred to adult criminal court, the entire case is transferred, including charges for which the juvenile court found probable cause lacking. App.Op.¶¶31–33. The appellate court rejected Smith’s argument that the juvenile court had dismissed some of the charges against him—this, the Eighth District explained, was “not an accurate procedural characterization.” App.Op.¶¶33. The juvenile court, it held, did not have the authority to dismiss any of the counts against Smith, and so the grand jury was free to indict him on any charges relating to his “single crime spree.” *Id.*

Smith appealed to this Court. It declined to accept his appeal for review. *State v. Smith*, 158 Ohio St. 3d 1435, 2020-Ohio-877. But Smith filed a motion for reconsideration of that decision and the Court granted his motion. *State v. Smith*, 159 Ohio St. 3d 1405, 2020-Ohio-3205.

## ARGUMENT

### **Amicus Curiae Ohio Attorney General’s Proposition of Law:**

*An adult court to which a juvenile criminal case is transferred takes jurisdiction over the juvenile’s entire case, including any claims with respect to which the juvenile court found no probable cause.*

When a juvenile court binds over a delinquent juvenile to adult criminal court, it transfers the entire case, not just specific charges. *See State v. D.B.*, 150 Ohio St. 3d 452,

2017-Ohio-6952, ¶¶14–15. At that point, the adult court has exclusive jurisdiction over the case, R.C. 2152.12(I), and that court may convict the defendant on any charges that the facts support, without regard to whether the juvenile court found those charges to be supported by probable cause.

**A. A juvenile court transfers an entire case, and not specific charges, when it binds a juvenile over to adult criminal court.**

Juvenile courts have exclusive initial jurisdiction over minors charged with crimes. R.C. 2152.02(C)(1); R.C. 2152.03; *see also Johnson v. Sloan*, 154 Ohio St. 3d 476, 2018-Ohio-2120 ¶5. That jurisdiction, however, is not always permanent. Responding to concerns about “a rise in rates and severity of juvenile crime,” the General Assembly “enacted a statutory scheme that provides for some juveniles to be removed from the juvenile courts’ authority” and transferred to adult criminal court. *State v. D.W.* 133 Ohio St. 3d 434, 2012-Ohio-4544 ¶9.

Under this scheme, juveniles may be transferred, or “bound over,” to adult court in two circumstances. “Mandatory bindover” occurs when the juvenile commits a crime that *requires* transfer to adult criminal court. *See* R.C. 2152.12(A); *see D.B.*, 150 Ohio St. 3d 452, ¶11. For example, juveniles charged with murder are subject to mandatory bindover, R.C. 2152.12(A)(1), as are juveniles who are at least sixteen years of age and who commit certain offenses with a firearm, R.C. 2152.10(A)(2)(b). In contrast, the process known as “discretionary bindover” *allows* transfer to adult court based on a juvenile’s characteristics. *See* R.C. 2152.12(B). A juvenile court has the option of transfer-

ring a case when the juvenile in question is at least fourteen years of age and when the court determines that the juvenile “is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require ... adult sanctions.” R.C. 2152.12(B)(1) & (3). The hearing at which amenability is addressed is often referred to as an “amenability hearing.” *See D.W.*, 133 Ohio St. 3d 434, syl. Once a case has been transferred, the juvenile court is deprived of jurisdiction with “respect to the delinquent acts alleged in the complaint” and “all further proceedings pertaining to the act charged shall be discontinued” in that court. R.C. 2152.12(I).

Regardless of whether a transfer is mandatory or discretionary, juvenile courts transfer cases, not charges, when they bind over delinquent juveniles to adult court. Under R.C. 2152.12(A)(1), if a juvenile court finds that there is probable cause to believe that a juvenile committed a charged act, the court “shall transfer *the case*” to adult court. R.C. 2152.12(A)(1)(a) & (b) (emphasis added). The same is true with respect to R.C. 2152.12(B); if a juvenile court determines that the requirements for a discretionary bindover have been met, it “may transfer *the case*.” R.C. 2152.12(B) (emphasis added). Neither statute permits transferring a subset of the case.

Upon transfer, the adult criminal court receives complete jurisdiction over the case and is not limited by what occurred in the juvenile court. *See* R.C. 2152.12(I). A grand jury, for example, may indict a defendant on any charges supported by the facts

of the case, even if those charges were not filed in the juvenile court. *State v. Adams*, 69 Ohio St. 2d 120, syl. ¶2 (1982), *superseded by statute on other grounds*.

This Court has confirmed that when a case involves multiple charges, a juvenile court's bindover decision transfers the entire case, not just individual charges. It held in *D.B.* that "[i]f a juvenile court determines in a delinquency case that there is probable cause to support a single charge of [a category two offense], *the case* is subject to mandatory transfer." *D.B.*, 150 Ohio St. 3d 452, ¶14 (emphasis in original). And it emphasized that a court "is not empowered to split [a] case in two" by treating some charges differently than others. *Id.*, ¶15. While it is true that the Court interpreted R.C. 2152.121 in *D.B.*, not R.C. 2152.12, that is irrelevant for purposes of this case. The two statutes contain identical language requiring the transfer of *cases*, not *charges*, to adult criminal court. *Compare* R.C. 2152.121(A), *with* R.C. 2152.12(A)(1)(a), (b), & (B).

Even before the Court decided *D.B.*, every Ohio appellate court to have considered the issue held that juvenile courts transfer entire cases, not just specific charges, when they bind a juvenile over to adult court. *State v. Cockrell*, 2016-Ohio-5797 ¶¶14–17 (1st Dist.); *State v. Smith*, 2015-Ohio-579 ¶21 (9th Dist.); *State v. Mays*, 2014-Ohio-3815 ¶¶30–34 (8th Dist.); *State v. Henderson*, 2007-Ohio-5368 ¶14 (2d Dist.). And the lower courts' conclusions have been similarly consistent in the years since this Court's *D.B.* decision. *State v. Frazier*, 2019-Ohio-1433 ¶47 (8th Dist.); *State v. Johnson*, 2019-Ohio-287 ¶6 (1st Dist.). The Eighth District in this case followed suit, holding that it received ju-

jurisdiction over Smith’s entire case—not just the charges with respect to which the juvenile court found probable cause. App.Op.¶33.

Rightly so. When the juvenile court transferred jurisdiction over Smith to the adult criminal court, his entire case came with him. *See* R.C. 2152.12(B); *D.B.*, 150 Ohio St. 3d 452, ¶¶14–15. Under this Court’s precedent, that meant he could be indicted on any charges supported by the facts of the case. *See Adams*, 69 Ohio St. 2d 120, syl. ¶2; *see also State v. Klingenberger*, 113 Ohio St. 418, 426 (1925), *superseded by statute on other grounds*. And that is just what happened: a grand jury indicted Smith on the same counts with which he had originally been charged in juvenile court. *See* Indictment, Tr.R.1; *see also* App.Op.¶10.

**B. A juvenile court’s finding of no probable cause does not limit the jurisdiction of the adult criminal court to which a case is properly transferred.**

Smith does not dispute that he was properly bound over to adult criminal court. He also does not dispute that he was indicted by a grand jury after his case was transferred. Smith simply argues that the grand jury could not indict him on charges that the juvenile court had already found no probable cause to believe he committed. The adult court, he contends, did not acquire jurisdiction over those charges. Smith’s argument is contradicted by the plain language of R.C. 2152.12 and this Court’s precedent; it misunderstands the nature of the juvenile court’s no-probable-cause finding; and it ultimately appeals to policy rather than law.

**1. Smith ignores the plain language of R.C. 2152.12 and this Court's precedent.**

Smith's argument that, upon transfer, a common pleas court obtains jurisdiction over specific charges rather than entire cases ignores the plain language of R.C. 2152.12. As discussed above, the statute transfers jurisdiction over *cases*. *See above* 7–10. Smith never addresses the language of the statute, however—not even to explain why it does not apply to him. He instead emphasizes that a juvenile court must hold a probable-cause hearing before transferring a case to adult court. *See* Smith Br. 15–19. That is true. It is also irrelevant. No one disputes that a probable-cause hearing is required. The juvenile court in this case held such a hearing, however. And it found probable cause to believe that Smith had committed at least some of the charged offenses. The relevant question here is: What ought to have happened next? Did R.C. 2152.12(B) and (I) transfer jurisdiction over the entire *case* to adult court or just the specific *charges* for which the juvenile court found probable cause? The statutes themselves answer the question, requiring transfer of “case[s],” not charges. *See* R.C. 2125.12(B) (a “juvenile court at a hearing may transfer [a] case if” certain criteria are met) and R.C. 2152.12(I) (“The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court, and *the case* then shall be within the jurisdiction of the court to which it is transferred”) (emphasis added).



It is not just the relevant statutory language that Smith ignores. He also fails to adequately reckon with this Court's decision in *D.B.* He acknowledges that *D.B.* held that, when juveniles are bound over to adult court, all of their charges are bound over as well. *See* Smith Br. 19–20. But Smith contends that *D.B.* should not apply to him because that case involved a mandatory bindover and he was bound over as a discretionary matter.

There is no reason to treat mandatory and discretionary bindovers differently. The statutory language requiring transfer of an entire “case” is the same with respect to both types of bindover. *Compare* R.C. 2152.12(A)(1), *with* R.C. 2152.12(B). And the statutory language that deprives a juvenile court of jurisdiction over a case applies equally to both as well. *See* R.C. 2152.12(I). In fact, the only meaningful difference between the two types of transfers is that a discretionary bindover requires a juvenile court to hold an amenability hearing while a mandatory transfer does not. *See* R.C. 2152.12(B)(3). But that does not matter for purposes of determining what charges may be brought in adult court. The focus of an amenability hearing is based not on the nature of any crime, but rather on the characteristics of the juvenile—in particular, whether the juvenile can be rehabilitated in the juvenile system. Those characteristics do not change based on the charges at issue. A juvenile who is not amenable to rehabilitation for one offense for which there is probable cause does not suddenly become amenable to rehabilitation for a different offense.

**2. Smith’s argument rests on a misunderstanding of the significance of the juvenile court’s no-probable-cause finding.**

Smith’s argument that he cannot be charged in adult court with offenses that a juvenile court found to be unsupported by probable cause misunderstands the import of the juvenile court’s decision. A bindover hearing is of limited scope. It does not involve a determination of the facts or of the “merits of the competing prosecution and defense theories.” *State v. Iacona*, 93 Ohio St. 3d 83, 96 (2001). Resolution of those questions is “a matter for a factfinder at trial.” *Id.* This Court has, in fact, explicitly cautioned juvenile courts about the need to respect the limited role that a bindover hearing plays; it has emphasized that juvenile courts must not “exceed the limited scope of the bindover hearing” by “assum[ing] the role of the ultimate fact-finder.” *In re A.J.S.*, 120 Ohio St. 3d 185, 2008-Ohio-5307, ¶44.

A bindover hearing’s limited scope is one reason why courts have consistently held that jeopardy does not attach when such a hearing is held. *See Keener v. Taylor*, 640 F.2d 839, 841–43 (6th Cir. 1981); *see also State v. Burns*, 2020-Ohio-3966 ¶71 (8th Dist.); *State v. Payne*, 118 Ohio App. 3d 699, 704–05 (3d Dist. 1997). While the U.S. Supreme Court has held that the protections of the Double Jeopardy Clause extend to juvenile proceedings generally, *Breed v. Jones*, 421 U.S. 519, 541 (1975), it has made clear that jeopardy does not attach to preliminary, non-adjudicatory hearings, *id.* at 538 n.18. “Jeopardy denotes risk,” specifically, “the risk that is traditionally associated with a criminal prosecution.” *Id.* at 528. Because a bindover hearing is *not* an adjudicatory

hearing that poses a risk of punishment, *see A.J.S.*, 12 Ohio St. 3d 185, ¶44, double-jeopardy principles are no barrier to the indictment of a bound-over juvenile on any charges supported by the facts of the transferred case, *cf. Adams*, 69 Ohio St. 2d 120, syl. ¶2.

The Eighth District correctly explained all of this in its decision below. It wrote: “Smith’s argument that Counts 4, 6, 7, and 8 were dismissed by the juvenile court is not an accurate procedural characterization.” App.Op.¶33. The juvenile court lacked the authority to dismiss any of the charges against Smith, *id.*, in part because bindover hearings are not adjudicative of a juvenile’s guilt or innocence, *see* App.Op.¶29 (quoting *State v. Frazier*, 2019-Ohio-1433 ¶39 (8th Dist.)). Ignoring the Eighth District’s correction, Smith repeats the same inaccurate characterization here. His argument is just as wrong now as it was below.

Equally wrong is Smith’s argument that there was no probable cause to believe that he committed the charged offenses. *See* Smith Br.22. While it may be true that the juvenile court found probable cause lacking with respect to certain counts, Smith was nevertheless indicted by a grand jury in adult court on the same charges for which he eventually pleaded guilty. This case therefore does not involve “unsubstantiated allegations.” *See* Smith Br.21. It involves charges that were presented to a grand jury and that the grand jury concluded were supported by probable cause. *See United States v.*

*Calandra*, 414 U.S. 338, 343 (1974) (a grand jury is responsible for determining “whether there is probable cause to believe a crime has been committed”).

Finally, Smith is wrong when he asserts that the State has a right to appeal any time a juvenile court concludes that there was no probable cause to believe a juvenile committed a charged offense. (This argument has nothing to do with whether bindover requires transfer of an entire case, but the State will address it anyway.) His argument rests on a misunderstanding of this Court’s decision in *A.J.S.*. See Smith Br.22. The juvenile court in that case found that the State lacked probable cause to establish that *A.J.S.* had committed an offense requiring mandatory bindover. See *A.J.S.*, 120 Ohio St. 3d 185, ¶9. Additionally, the court did not relinquish jurisdiction to the adult court as a discretionary matter. See *id.*, ¶33. In those circumstances—where a juvenile court refuses to transfer a case—this Court held that the State had a right to appeal the juvenile court’s probable-cause determination. *Id.* Essential to the Court’s decision, however, was the fact that the juvenile court’s refusal to transfer the case to adult court meant that proceedings would continue in the juvenile court and that, once adjudicatory proceedings had commenced, double-jeopardy principles would prevent the State from seeking an indictment in adult court. *Id.*, ¶28. The reasoning of *A.J.S.* does not apply in cases, like this one, where the juvenile court *did* transfer jurisdiction. *A.J.S.* says nothing about whether the State has a right to appeal when a juvenile court finds that probable cause exists for some charges but not others.

The Court has, in fact, since made clear that it *has not* addressed the question whether the State may appeal when a juvenile court determines that no probable cause exists during a discretionary-bindover proceeding. See *In re M.P.*, 124 Ohio St. 3d 445, 2010-Ohio-599, ¶15. It has also never considered whether the State may appeal when a juvenile court finds probable cause to believe that a juvenile has committed only some of the charged offenses. It has, until now, had no need to do so. Because R.C. 2152.12 requires a juvenile to transfer an entire case upon finding that there is probable cause to believe a juvenile committed at least some of the charged offenses, the question has simply never arisen. And even now, that question will arise only if the Court ignores the language of R.C. 2152.12 and rejects its own precedent by holding that a juvenile court's no-probable-cause finding prevents certain charges from being brought after a case has been transferred to adult court.

**3. Smith should direct his policy arguments to the General Assembly.**

Smith provides no other legal basis for his arguments. One searches in vain, for example, for any constitutional basis for his claim that the grand jury was barred from considering charges for which the juvenile court found no probable cause. He does not discuss—or even cite—the Double Jeopardy or Due Process Clauses of the state or federal constitutions. He also never argues that *res judicata* or the law-of-the-case doctrine barred portions of the grand jury's indictment. And even if he had made such an argument, it would be without merit. Cf. *State v. Brooks*, 2009-Ohio-2126 ¶7 (8th Dist.)

(indictment by a subsequent grand jury is not prohibited after an earlier grand jury returns a no bill). He instead contends that his indictment on charges for which the juvenile court found no probable cause was “unfair,” and then offers a variety of policy reasons why he believes that is so. *See* Smith Br.24, 10–11.

Smith directs his arguments to the wrong branch of government. As even Smith acknowledges, it was the General Assembly that created the juvenile-court system and its bindover process. *See* Smith Br.8–9. If that system is no longer working as intended, then it is the General Assembly that must change it. *See State v. Aalim*, 10 Ohio St. 3d 489, 2017-Ohio-2956 ¶3. In Ohio, a court’s role “is to apply the statute as it is written—even if [the court] think[s] some other approach might accord with good policy.” *Johnson v. Montgomery*, 151 Ohio St. 3d 75, 2017-Ohio-7445 ¶15 (quoting *Burrage v. United States*, 571 U.S. 204, 218 (2014) (alterations omitted)). Smith may or may not be correct that there are problems with the bindover process. But whether he is right or not, and whether changes to the juvenile-court system are warranted, is a question for the legislature.

## CONCLUSION

The Court should affirm the decision below.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee was served by email this 2nd day of October, 2020, upon the following counsel:

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