In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2021-0967
	:	
Appellee,	:	On appeal from the Cuyahoga County
	:	Court of Appeals,
v.	:	Eighth Appellate District
	:	
TYSEAN MARTIN,	:	Court of Appeals
	:	Case No. CA-19-108996
Appellant.	:	

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

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INTRODUCTION

This case presents the following question: If a juvenile court finds probable cause to bind over a juvenile offender, may the offender challenge the bindover on the ground that the probable-cause finding was contrary to the manifest weight of the evidence? The answer is "no." Probable cause is a "flexible, common-sense standard" that "does not demand any showing that … a belief be correct or more likely true than false." *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality op.). In the context of a juvenile-bindover hearing, the State satisfies the probable-cause standard whenever it presents evidence sufficient to raise "more than a mere suspicion of guilt." *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307 ¶62. A juvenile court may not assume the role of the ultimate factfinder by weighing the evidence presented at the hearing, *see id.* ¶¶60, 64, and a reviewing court may not do so on appeal, *see id.* ¶¶50–51, 64.

The nature of the probable-cause standard limits the scope of an appellate court's review. A reviewing court may decide whether there was sufficient evidence to support the juvenile court's probable-cause finding. It may, in other words, ask whether "the state presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged." *Id.* ¶51. But because the probable-cause standard requires only "some" evidence of guilt, *see id.* ¶59, a probable-cause finding cannot be reviewed to see whether it was supported by the *weight* of the evidence.

The easy-to-satisfy probable-cause standard makes juvenile bindover different from other cases where the Court has blessed a manifest-weigh-of-the-evidence inquiry. All other cases, be they criminal or civil, require the party bearing the burden of persuasion to show that the evidence, on balance, entitles that party to relief. *See State ex rel. Doner v. Zody*, 130 Ohio St. 3d 446, 2011-Ohio-6117 ¶54; *see also Ethyl Corp. v. EPA*, 541 F.2d 1, 28 n.58 (D.C. Cir. 1976) (*en banc*). In these contexts—when the question is whether the party proved its entitlement to relief beyond a reasonable doubt, by clear and convincing evidence, by a preponderance, and so on—it makes sense to ask whether the "greater amount" of evidence favors one side or another. *See Eastley v. Volkman*, 132 Ohio St. 3d 328, 2012-Ohio-2179 ¶19. The same is not true with respect to probable cause. The "more than a mere suspicion" standard that this Court has adopted for probable cause findings under R.C. 2152.12, the statute governing juvenile bindover, does not require that the greater quantity of evidence favor the State; it requires only that there be *some* evidence capable of supporting the belief that the juvenile committed the crimes with which he has been charged. *See State v. Iacona*, 93 Ohio St. 3d 83, 93 (2001); *A.J.S.*, 120 Ohio St. 3d 185 ¶62. Because the State need not show that guilt is more likely than not to establish probable cause, it does not make sense for a reviewing court to ask whether the balance of evidence favors one party or another.

In light of this inherent incompatibility, the Eighth District correctly held that a juvenile court's probable-cause determination is not susceptible to a manifest-weight-

of-the-evidence review. Martin offers no reason to conclude otherwise. The Court should affirm.

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 importance, 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 he was seventeen years-old, Tysean Martin participated in a gun battle that left Darnez Canion dead. *See* Nov. 2, 2019 Hearing Tr.11–12, 36–38, 80–84, 131 ("Hearing Tr."). Based on Martin's role in the gunfight that killed Canion, the State filed a complaint in Cuyahoga County Juvenile Court. It alleged that Martin was delinquent. And the State sought to bind Martin over to the general division of the common pleas court and try him as an adult. *See State v. Martin*, 2021-Ohio-1096 ¶5 (8th Dist.) ("App.Op."). The State charged Martin with, among other things, using a gun to commit involuntary manslaughter. Based on that charge, R.C. 2152.12(A) required the ju-

venile court to bind Martin over to adult court if it found probable cause to believe that he committed the offense. As required by statute, the juvenile court held a hearing to determine whether probable cause existed.

At the probable-cause hearing, the State presented testimony from a witness who observed the shooting. A friend of Martin's, M.G., testified that she saw Martin firing a gun during the altercation. Hearing Tr.19–22, 36–38. Although M.G. was not physically present during the gunfight, she observed it, and the events leading up to it, during a Facetime video call on an iPhone. Hearing Tr.32–36. M.G. testified that she saw Martin firing a gun, but that the gun eventually jammed. Hearing Tr.36–38. Although M.G. equivocated on cross-examination, *see* Hearing Tr.59, she maintained that she had seen Martin fire a gun, Hearing Tr.57, and testified that her testimony on direct was consistent with a statement that she had given to the police at the time of the shooting, Hearing Tr.57–59. M.G. also testified that, following the shooting, someone who was present during the gunfight demonstrated how Martin had fired his gun. Hearing Tr.60.

The State also presented other evidence that linked Martin to Canion's murder. Video surveillance of the school parking lot where the shooting took place showed Martin with a gun in his hand. Hearing Tr.114–15, 125–26, 153–55. And the police collected spent bullet casings from locations where Martin had been observed with that gun. App.Op.¶4; Hearing Tr.97.

Based on the evidence presented at the hearing, the juvenile court found probable cause to believe that Martin had committed the charged offenses and bound him over to criminal court. App.Op.¶8. Martin pleaded guilty to involuntary manslaughter, aggravated riot, and having a weapon under disability. Each charge carried one- and three-year firearm specifications. Plea, R.32. The trial court accepted Martin's plea and sentenced him to a total of fifteen years in prison. Sentence, R.33; App.Op.¶2.

2. Martin appealed. On appeal, he challenged the juvenile court's determination that there was probable cause to believe that he committed the crimes with which he had been charged. *See* App.Op.¶9. He alternatively argued that, if the juvenile court had not erred in making its probable-cause determination, then Ohio's probable-cause standard violated his due-process rights. *See id.* Martin had not challenged that standard before then, however, so Martin added to his alternative argument an allegation that his counsel's failure to object to the probable-cause standard amounted to ineffective assistance of counsel. *See* App.Op.¶38.

The Eighth District Court of Appeals rejected Martin's assignments of error and affirmed the juvenile court's probable-cause finding. App.Op.¶47. Martin's first assignment of error alleged only that there was insufficient evidence to support the finding. But he argued in support of that assignment of error that the juvenile court's finding was against the manifest weight of the evidence as well. *See* App.Op.¶¶9, 21. The Eighth District held that neither argument had merit. It concluded that there was suffi-

cient evidence to satisfy the probable-cause standard that this Court adopted in *Iacona* and reaffirmed in *A.J.S.* App.Op.¶¶12–23. And it further concluded that the nature of that probable-cause standard precluded Martin's manifest-weight-of-the-evidence argument. App.Op.¶22. In doing so, it joined the Second District, which has also held that "a manifest weight analysis has no place in reviewing a juvenile court's probable cause determination." *State v. Starling*, 2019-Ohio-1478, ¶46 (2d Dist.).

Martin appealed to this Court, raising four Propositions of Law. Among other things, Martin challenged the Eighth District's refusal to entertain his manifest-weight-of-the-evidence claim. And he again asserted that Ohio's probable cause standard violated his due process rights. *See* Memorandum in Support of Jur. at i. The Court accepted Martin's Proposition of Law challenging the Eighth District's dismissal of his manifest-weight claim, but rejected his remaining propositions. *State v. Martin*, 165 Ohio St. 3d 1449, 2021-Ohio-3908.

ARGUMENT

Amicus Curiae Ohio Attorney General's Proposition of Law:

> *A defendant who has been bound over from juvenile court may not bring a manifest-weight-of-the-evidence challenge to the juvenile court's probable-cause finding.*

Martin challenges the juvenile court's determination that there was probable cause to believe that he used a gun to commit involuntary manslaughter. That determination, he argues, was against the manifest weight of the evidence.

The Court should hold that defendants may not bring manifest-weight-of-the-evidence challenges to probable-cause determinations. Before explaining why, however, the Attorney General pauses to note that it is doubtful whether defendants who plead guilty after having been transferred from juvenile court, as Martin did, can bring *any* challenge to a juvenile court's probable-cause determination. After defendants are transferred, but before they may be tried as adults, they must be indicted by a grand jury. *See A.J.S.*, 120 Ohio St. 3d 185 ¶23 (bindover is "ancillary to grand jury proceedings"); *see also* R.C. 2151.23(H) (the court to which a case is transferred has authority to hear the case "in the same manner as if the case originally had been commenced in that court"). That grand-jury indictment should preclude all challenges to a juvenile court's earlier probable-cause finding. In the same way that a grand-jury indictment prevents a defendant from arguing that a warrantless arrest was not supported by probable cause, *Kaley v. United States*, 571 U.S. 320, 329 (2014), it should also prevent a defendant from challenging a juvenile court's finding of probable cause. And even if the grand jury's indictment does not preclude all challenges to a juvenile court's probable cause finding, a guilty plea in adult court should. A guilty plea generally waives "any complaint as to claims of constitutional violations not related to the entry of the guilty plea." *State v. Ketterer*, 111 Ohio St. 3d 70, 2006-Ohio-5283 ¶105; *see also* Crim.R. 11(B)(1) (a guilty plea is a complete admission of guilt).

The parties to this case have not addressed the effect of a subsequent indictment or a guilty plea on a challenge to a probable-cause finding, however, and the Court should not consider that question now. It will have an opportunity to do so soon enough. At least two Ohio appellate courts have held that a defendant who has pleaded guilty in adult court may not challenge a juvenile court's probable-cause finding. *State v. Zarlengo*, 2021-Ohio-4631, ¶46 (7th Dist.); *State v. Powell*, 2021-Ohio-200 ¶¶1–2 (4th Dist.). At the time that this brief was filed, the Court was considering whether to grant review of at least one of those decisions. *See State v. Zarlengo*, Case No. 2022-0106. The Court should take care not to include language inadvertently resolving this important issue in this case; indeed, it should expressly reserve the question for a case in which it is clearly and directly presented.

A. A juvenile court's probable-cause finding cannot be challenged on the basis that it was against the manifest weight of the evidence.

When a juvenile court finds probable cause after a bindover hearing, juvenile offenders may appeal that finding. *See A.J.S.*, 120 Ohio St. 3d 185 ¶51. This case presents the following question: Can an appellate court reverse a juvenile court's probable-cause determination if it thinks the determination was contrary to the manifest weight of the evidence? No, it cannot. The question whether there was probable cause does not turn on any weighing of the evidence. Instead, courts must ask whether the evidence presented "raises more than a mere suspicion of guilt." *Iacona*, 93 Ohio St. 3d at 93. If it does, probable cause exists and the inquiry is over. Appeals of probable-cause findings

turn on the question "whether the state presented sufficient evidence to demonstrate probable cause to believe that the juvenile committed the acts charged." *A.J.S.*, 120 Ohio St. 3d 185 ¶51. The relative *weight* of the evidence has no bearing on the question whether the evidence was sufficient to support a probable-cause finding. Indeed, it is not even clear what a manifest-weight-of-the-evidence standard would mean in this context. Because probable cause requires only "some" evidence, *see id.* ¶59, asking whether a probable-cause finding is supported by the manifest weight-of the evidence is nonsensical. It is rather like asking how much an inch weighs.

The Eighth District correctly held that there is no such thing as a manifest-weight-of-the-evidence challenge to a probable-cause finding. This Court should affirm.

1. When a juvenile commits a criminal offense, the State of Ohio must charge the offender in juvenile court. *See* R.C. 2152.02(C)(1); R.C. 2152.03; *see also Johnson v. Sloan*, 154 Ohio St. 3d 476, 2018-Ohio-2120 ¶5. But cases need not remain in that court. That is because the General Assembly has "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. Certain juveniles who use a gun to commit a serious offense (such as involuntary manslaughter) *must* be transferred to adult court. *See* R.C. 2152.10(A)(2); R.C. 2152.02(BB)(2). This process is known as "mandatory bindover." Other juveniles *may* be transferred, but only if a ju-

venile court first determines that they are not amenable to rehabilitation in the juvenile justice system. R.C. 2152.12(B). This process is known as "discretionary bindover." Mandatory and discretionary bindovers have at least one thing in common: before a juvenile court may transfer either type of case, it must find probable cause to believe that the juvenile committed the charged offenses. *See* R.C. 2152.12(A)(1)(a)(i)–(ii), (A)(1)(b)(i)–(ii), (B)(2).

Probable cause "is not a high bar" for the State to clear. *See Kaley*, 571 U.S. at 338. Instead, it is a "flexible, common-sense standard" that "does not demand any showing that … a belief be correct or more likely true than false." *Brown*, 460 U.S. at 742 (plurality op.). "The substance of all the definitions of probable cause is a reasonable ground for belief of guilt." *Brinegar v. United States*, 338 U.S. 160, 175 (1949) (quotations omitted). A showing of probable cause typically "requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act." *Kaley*, 571 U.S. at 338 (alterations accepted, quotations and citations omitted); *see also Illinois v. Gates*, 462 U.S. 123, 235 (1983). It "does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction." *State v. Perez*, 124 Ohio St. 3d 122, 2009-Ohio-6179 ¶73 (quotations omitted); *see also Brinegar*, 338 U.S. at 175.

This flexible standard is familiar to the law. Warrantless arrests are permissible, for example, if they are supported by probable cause. In such cases, the Court has held,

probable cause is "defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *State v. Tibbetts*, 92 Ohio St. 3d 146, 153 (2001) (quoting *Gerstein v. Pugh*, 420 U.S. 103, 111–12 (1975)). Grand juries are likewise tasked with determining whether probable cause exists to believe a crime was committed. *See Kaley*, 571 U.S. at 338–39. There too, a finding of probable cause is an "undemanding" standard that requires only a fair probability that a crime was committed. *See id.*

This Court has applied the same flexible standard to probable-cause determinations under R.C. 2152.12. It has held that, at a probable-cause hearing held pursuant to that statute, the State does not need to "'provide evidence proving guilt beyond a reasonable doubt.'" *A.J.S.*, 120 Ohio St. 3d 185 ¶42 (quoting *Iacona*, 93 Ohio St. 3d at 93). The State, to carry its burden of showing probable cause, must simply present "evidence that raises more than a mere suspicion of guilt." *Id.* If the State carries that burden, it has established probable cause.

On appeal, courts reviewing a probable-cause finding must ask whether "the state presented sufficient credible evidence to demonstrate probable cause to believe that the juvenile committed the acts charged." *Id.* ¶65. In conducting this analysis courts must not weigh competing evidence of guilt and innocence. To the contrary, "resolution of the conflicting theories of the evidence … is a matter for the trier of fact at a trial on the merits of the case." *Id*. ¶64. While the State "'must provide credible evi-

dence of every element of an offense to support a finding that probable cause exists,'" *Id.* ¶42 (quoting *Iacona*, 93 Ohio St. 3d at 93), reviewing courts must "defer to the trial court's determinations regarding witness credibility," *A.J.S.*, 120 Ohio St. 3d 185 ¶51.

In sum, this case is as easy as it sounds. Probable-cause findings must be upheld on appeal if there is evidence sufficient to support a probable-cause finding. The weighing of evidence has no role to play.

2. The foregoing shows that, when presented with the appeal of a probable-cause determination, appellate courts may ask only whether the evidence is sufficient to justify that finding. *See id.* ¶¶50–51. This subsection explains why probable-cause determinations *are not* capable of being reviewed under a manifest-weight-of-the-evidence standard.

Manifest-weight-of-the-evidence requires a reviewing court to independently weigh the evidence that was presented at a trial. Determining whether a verdict was against the manifest weight of the evidence "draws the appellate court into questions of credibility," *Tibbs v. Florida*, 457 U.S. 31, 37–38 (1982), and requires a court to ask whether the "greater amount of credible evidence" supports one side of an issue or the other, *State v. Thompkins*, 78 Ohio St. 3d 380, 387 (1997) (quotations omitted). "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of conflicting testimony." *Id.* (quoting *Tibbs*, 457 U.S. at 42).

This reweighing of evidence makes the manifest-weight-of-evidence standard incompatible with review of probable-cause findings. That is because weighing competing evidence is the precise thing that the Court has held appellate courts *may not* do when considering whether there is probable cause to believe that a juvenile committed a charged offense. The "weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St. 2d 230, syl.1 (1967). A juvenile court, however, does not act as a trier of fact at a probable-cause hearing. A probable-cause hearing is a preliminary hearing with a limited scope, *see Iacona*, 93 Ohio St. 3d at 96, and a juvenile court may not "assume the role of the ultimate fact-finder" by determining "'the merits of the competing prosecution and defense theories,'" *A.J.S.*, 120 Ohio St. 3d 185 ¶43 (quoting *Iacona*, 93 Ohio St. 3d at 96). Again, the "resolution of conflicting theories of the evidence," the Court has held, "is a matter for the trier of fact at a trial on the merits of the case, not a matter for exercise of judicial discretion at a bindover hearing in juvenile court." *Id.* ¶64.

If a reviewing court cannot "weigh[] the conflicting evidence" presented at a probable-cause hearing, *id.* ¶60, and if it cannot assume the role of the ultimate factfinder, *id.* ¶44, then it cannot act as a "thirteenth juror." Thus, the Eighth District correctly held that appellate courts may not reverse probable-cause findings on the ground that they are contrary to the manifest weight of the evidence. App.Op.22. Its decision relied on *Iacona* and *A.J.S.* This Court can reverse the Eighth District only by overruling

those decision. And although Martin's Memorandum in Support of Jurisdiction asked the Court to reconsider the probable cause standard it adopted in those cases, the Court explicitly declined to accept Martin's Proposition of Law challenging that standard. *See State v. Martin*, 165 Ohio St. 3d 1449, 2021-Ohio-3908 (accepting Martin's first Proposition of Law only).

B. Martin's challenges to the Eighth District's decision are without merit.

Martin offers three reasons why he believes that the Eighth District erred when it refused to entertain his manifest-weight-of-the-evidence challenge. Each fails.

1. Martin first argues that reviewing a juvenile court's probable-cause finding to see whether it was against the manifest weight of the evidence is similar to the manifest-weight-of-the-evidence review that courts perform in other criminal and civil contexts. The only difference, he claims, is that review of a probable-cause determination tests the evidence against a lower standard of persuasion. Martin Br.8 (citing *Eastley*, 132 Ohio St.3d 328).

There are at least two other important differences that Martin overlooks. *First*, a probable-cause finding is not a final verdict. *See Iacona*, 93 Ohio St. 3d at 93. And the Court has never held that a preliminary finding may be reviewed under a manifest-weight-of-the evidence standard. *Second*, unlike the evidentiary standards that apply in other cases, probable-cause does not require the State to show that the evidence, on balance, supports a particular finding. The beyond-a-reasonable-doubt standard that ap-

plies in criminal cases, the preponderance-of-the-evidence standard that applies in most civil cases, and all other standards of proof have one thing in common: the party that bears the burden must show that the greater amount of credible evidence demonstrates that they are entitled to relief. *See Doner*, 130 Ohio St. 3d 446 ¶54; *see also Addington v. Texas*, 441 U.S. 418, 423–25 (1979). That is, in all other cases, more than half of the available evidence must favor the party that bears the burden. The only difference between the standards is how much more than fifty percent is required. *Id.*

A juvenile probable-cause finding is different. The State does not need to prove that more than half of the available evidence is on its side. It need show only that there is *some* evidence to believe that a juvenile committed a charged offense. *See A.J.S.*, 120 Ohio St. 3d 185 ¶59; *Iacona*, 93 Ohio St. 3d at 93. This "more than a mere suspicion" standard distinguishes probable cause from the standards of persuasion that apply in cases where the Court has held that weight-of-the-evidence review is permissible. And it is that standard that makes a manifest-weight-of-the-evidence review inappropriate. Asking whether the greater amount of evidence supported a juvenile court's probable cause finding makes little sense if the State was never required to prove that it was more likely than not that a juvenile committed an offense in the first place.

2. Next, Martin attempts to undermine the juvenile court's probable-cause determination by highlighting factual findings that he characterizes as inconsistent with that determination. He suggests, for example, that the juvenile court had doubts about

whether Martin had ever fired a gun. *See* Martin Br.5. Putting aside the fact that the juvenile court did not need to decide that question at the probable-cause stage, Martin fails to mention that the juvenile court made the statement he quotes at the close of the probable-cause hearing. At that point, the juvenile court had not yet had the chance "to look at" and consider the evidence that had been presented, including video evidence. Hearing Tr.181–82. After it reviewed that evidence, the juvenile court no longer had any doubts as to probable cause. At a later hearing, the juvenile court specifically addressed the elements of the offense that provided the basis for mandatory bindover. And it stated that, "based on the videos that we saw," there was probable cause to believe that Martin had a "firearm on or about his person, under control, displayed, brandished or indicated using the firearm." Nov. 16, 2018 Hearing Tr.8–9. The juvenile court's judgment entry reflects that same conclusion; it states that there was probable cause to believe that Martin used a gun to commit involuntary manslaughter. Nov. 28, 2018 Journal Entry at 1.

Martin also quotes a portion of an entry that summarized the evidence that had been presented at the probable-cause hearing. Specifically, Martin quotes the part of the entry that summarized M.G.'s testimony on cross-examination. *See* Martin Br.1. He seems to imply that the juvenile court did not find M.G. credible when she testified that she saw Martin fire his gun. *See id.* Martin takes the language he quotes out of context, however. The same entry also summarized M.G.'s direct-examination testimony; it

stated that M.G. "observed [Martin] shooting a firearm though, the gun jammed." Dec. 4, 2018 Journal Entry at 1. Read as a whole, it is clear that the juvenile court's entry did not make any credibility determinations; all it did was summarize the evidence that had been presented at the probable-cause hearing. *See id.*

3. Finally, Martin argues that the Eighth District has been inconsistent. He claims that while the Eighth District refused to entertain his weight-of-the-evidence challenge in this case, it allowed the State to bring a weight-of-the-evidence challenge in *In re J.R.*, 2021-Ohio-2272. Martin Br.14. The Eighth District in *J.R.* performed a sufficiency review—in other words, it asked whether the evidence was sufficient to support a probable-cause finding—not a weight-of-the-evidence review. *See J.R.*, 2021-Ohio-2272 ¶34. But Martin insists that, despite what the Eighth District said, what it actually *did* was consider the weight of the evidence. Martin Br.14. He is wrong. The Eighth District did not weigh any evidence in that case. It held that the juvenile court had failed to consider certain evidence and, after accounting for that evidence, held that the State had presented sufficient evidence to believe that the juvenile in question had committed the crimes with which he had been charged. *J.R.*, 2021-Ohio-2272 ¶¶35–45. The Eighth District's decision in *J.R.* therefore does not reveal a "staggering" double standard, *see* Martin Br.15, nor does it create a conflict with the decision at issue here. The two decisions are in fact largely the same; they both involved a routine application of *Iacona* and *A.J.S.* and a routine sufficiency-of-the-evidence review.

In any event, the Eighth District erred if it did in *J.R.* what Martin accuses it of having done. And this Court is not bound by the errors in lower-court precedents.

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 24th day of March, 2022, upon the following counsel:

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