

In the
Supreme Court of Ohio

Danan L. Simmons, Jr.,	:	Case No. 2021-0532
	:	
Appellant,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eight Appellate District
State of Ohio,	:	
	:	Court of Appeals
Appellee.	:	Case No. 109476

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

CULLEN SWEENEY* (0077187)
Cuyahoga County Public Defender
JOHN T. MARTIN (0020606)
Assistant Public Defender
310 Lakeside Ave., Suite 200
Cleveland, OH 441133
(216) 443-7583
csweeney@cuyahogacounty.us
Counsel for Danan L. Simmons, Jr.

MICHAEL C. O'MALLEY
Cuyahoga County Prosecutor
DANIEL T. VAN*
Assistant Prosecuting Attorney
The Justice Center – 9th Floor
1200 Ontario St.
Cleveland, OH 44113
(216) 443-7800
dvan@prosecutor.cuyahogacounty.us
Counsel for the State of Ohio

DAVE YOST (0056290)
Ohio Attorney General

BENJAMIN M. FLOWERS* (0095284)
Solicitor General
**Counsel of Record*
MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor General
DIANE R. BREY (0040328)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
benjamin.flowers@ohioago.gov
Counsel for Amicus Curiae
Ohio Attorney General Dave Yost

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF <i>AMICUS</i> INTEREST	1
ARGUMENT.....	1
<i>Amicus</i> Attorney General’s Proposition of Law:	1
<i>The Reagan Tokes Law does not contravene the United States Constitution or the Ohio Constitution.</i>	1
CONCLUSION.....	2
CERTIFICATE OF SERVICE	3

TABLE OF AUTHORITIES

Cases	Page(s)
<i>State v. Hacker</i> , 2020-1496 (Ohio).....	1
Statute	
R.C. 109.02.....	1

STATEMENT OF *AMICUS* INTEREST

The Attorney General is Ohio's chief law 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. As the chief law officer, the Attorney General has an interest in defending the constitutionality of validly enacted legislation, including the Reagan Tokes Law. Indeed, the Attorney General *is* defending the Law in related litigation pending before this Court. *See State v. Hacker*, 2020-1496 (Ohio).

ARGUMENT

Amicus Attorney General's Proposition of Law:

The Reagan Tokes Law does not contravene the United States Constitution or the Ohio Constitution.

This case presents precisely the same question as the one the Court agreed to decide in *State v. Hacker*: whether the Reagan Tokes Law violates the Ohio Constitution or the United States Constitution. The appellants in both cases raise precisely the same theories. In particular, both *Hacker* and *Simmons* maintain that the Reagan Tokes Law violates the Ohio Constitution's separation of powers, the Sixth Amendment right to a jury trial, and the Fourteenth Amendment right to due process of law. Each of those theories fails for the reasons laid out in the State's brief in *Hacker*, which the Attorney General filed on the State's behalf. *See* Merit Br. of Appellee State of Ohio, *State v. Hacker*, 2020-1496 (Aug. 2, 2022). Rather than swelling this Court's docket with a duplicative filing, the Attorney General refers the Court to that brief.

CONCLUSION

This Court should affirm the judgment of the Eighth District Court of Appeals.

Respectfully submitted,

DAVE YOST (0056290)
Ohio Attorney General

/s/ Benjamin M. Flowers
BENJAMIN M. FLOWERS* (0095284)
Solicitor General

**Counsel of Record*

MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor General

DIANE R. BREY (0040328)

Deputy Solicitor General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

(614) 466-8980

benjamin.flowers@ohioago.gov

Counsel for *Amicus Curiae*

Ohio Attorney General Dave Yost

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee State of Ohio was served this 2nd day of August, 2022, by e-mail on the following:

CULLEN SWEENEY
Cuyahoga County Public Defender
310 Lakeside Ave., Suite 200
Cleveland, OH 441133
csweeney@cuyahogacounty.us
Counsel for Danan L. Simmons, Jr.

DANIEL T. VAN
Assistant Prosecuting Attorney
The Justice Center – 9th Floor
1200 Ontario St.
Cleveland, OH 44113
dvan@prosecutor.cuyahogacounty.us
Counsel for the State of Ohio

/s Benjamin M. Flowers
Benjamin M. Flowers
Solicitor General