

**IN THE  
SUPREME COURT OF OHIO**

STATE OF OHIO

Plaintiff-Appellee

v.

CHRISTOPHER HACKER

Defendant-Appellant

CASE NO. 2020-1496

ON APPEAL FROM LOGAN COUNTY  
COURT OF APPEALS, THIRD  
APPELLATE DISTRICT

COURT OF APPEALS CASE NO.  
CA-8-20-01

**BRIEF OF AMICUS CURIAE CUYAHOGA COUNTY PROSECUTOR'S OFFICE IN  
SUPPORT OF APPELLEE STATE OF OHIO**

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## **I. INTRODUCTION**

Am.Sub.S.B. No. 201, 2018 Ohio Laws 157 also known as the Reagan Tokes Law consists of 50 statutory amendments and four new statutory enactments. Defendants across the State of Ohio, like Christopher Hacker and Danan Simmons, Jr., have challenged the constitutionality of the Reagan Tokes Law, yet this appeals must be placed in the proper context. Properly framed, Hacker challenges the constitutionality of R.C. 2967.271(C) arguing that it violates: (1) his right to a jury trial; (2) the separation of powers doctrine; and (3) due process. Because Hacker fails to prove that R.C. 2967.271(C) on any ground the decision below must be affirmed. In any event, Hacker fails to prove that the 50 statutory amendments and four new statutory enactments that make up the Reagan Tokes Law are unconstitutional in its entirety.

## **II. STATEMENT OF THE CASE AND FACTS**

Amicus Curiae adopts the statement of the case and the statement of the facts as set forth by Appellee, State of Ohio.

## **III. STATEMENT OF INTEREST OF AMICUS CURIAE**

Prosecutor Michael C. O'Malley is the elected prosecutor of Cuyahoga County. The Cuyahoga County Prosecutor's Office on behalf of the State of Ohio has litigated constitutional challenges to R.C. 2967.271(C) at the trial court level and at the appellate level in the Eighth District Court of Appeals. Prosecutor O'Malley represents the State of

Ohio in *State v. Simmons*, Sup. Ct. Case No. 2021-0532 and is defending the constitutionality of the “Reagan Tokes Law” in that case.

The constitutional challenges raised in this appeal and in *Simmons* has been rejected by the en banc Eighth District Court of Appeals in *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470. Since then over 100 decisions out of the Eighth District cited *Delvallie*. These case have been appealed to this Court and this Court has accepted those cases and held them for the decision in *Delvallie* and *Simmons*. As such, the Cuyahoga County Prosecutor’s Office has a strong interest in the outcome of this case as it would certainly impact the cases now being held for this case and *Simmons*.

#### IV. LAW AND ARGUMENT

**PROPOSITION OF LAW: AS AMENDED BY THE REAGAN TOKES ACT, THE REVISED CODE’S SENTENCES FOR FIRST AND SECOND DEGREE QUALIFYING FELONIES VIOLATE THE UNITED STATES AND OHIO CONSTITUTIONS.**

Under this proposition of law, Appellant raises three challenges specific constitutional challenges:

- I. The Reagan Tokes Act Violates the Separation of Powers Because The Ohio Department of Rehabilitation and Corrections Determines the Length of an Individual’s Sentence.
- II. The Reagan Tokes Act Violates Mr. Hacker’s Constitutional Right To A Trial By Jury Because DRC As Opposed To A Jury Makes The Necessary Findings To Increase A Presumptive Sentence.

III. The Reagan Tokes Act Violates Mr. Hacker's Constitutional Right To Due Process Because It Fails to Provide Him With Adequate Notice and a Fair Hearing.

As stated above, the constitutional challenges presented here are similar to the ones being litigated out of Cuyahoga County. The Eighth District has rejected those arguments. See *State v. Delvallie*, 8th Dist. Cuyahoga No. 109315, 2022-Ohio-470. The constitutional challenges should fail for the reasons detailed in the Cuyahoga County Prosecutor's Office forthcoming merit brief in *Simmons*. As such the Court should find that Appellant fails to demonstrate that the "Reagan Tokes Law" violates the separation of powers doctrine, a defendant's jury trial rights, and due process.

**CONCLUSION**

The Court should affirm the judgment of the Third District Court of Appeals.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

A copy of the foregoing has been filed through the Court's electronic filing system on this 2<sup>nd</sup> day of August, 2022 and has been served on the following via electronic mail:

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