Supreme Court of Ohio Clerk of Court - Filed November 28, 2022 - Case No. 2022-0603

IN THE SUPREME COURT OF OHIO
2022

STATE OF OHIO, Plaintiff-Appellee, -vs- TYREE DANIEL, Defendant-Appellant.	Case No. 22-603 On Appeal from the Lucas County Court of Appeals, Sixth Appellate District Court of Appeals No. L-21-1104

BRIEF OF
AMICUS CURIAE OHIO PROSECUTING ATTORNEYS ASSOCIATION
IN SUPPORT OF PLAINTIFF-APPELLEE STATE OF OHIO

Steven L. Taylor 0043876
Legal Research and Staff Counsel
Ohio Prosecuting Attorneys Association
196 East State Street, Suite 200
Columbus, Ohio 43215
Phone: 614-221-1266
Fax: 614-221-0753
E-mail: taylor@ohiopa.org
Counsel for Amicus Curiae Ohio Prosecuting Attorneys Assn.

Edward J. Stechschulte 0085129
Kalniz, Iorio & Reardon Co., LPA
5550 W. Central Avenue
Toledo, Ohio 43615
Phone: 419-537-4821
Fax: 419-535-7732
E-mail: estechschulte@ioriolegal.com
Counsel for Defendant-Appellant

Julia R. Bates 0013426
Lucas County Prosecuting Attorney
Evy Jarrett 0062485
(Counsel of Record)
Assistant Prosecuting Attorney
Lucas County Courthouse
Toledo, Ohio 43604
Phone: 419-213-2001
Fax: 419-213-2011
Email: ejarrett@co.lucas.oh.us
Counsel for State of Ohio

Other counsel on
Certificate of Service

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STATEMENT OF AMICUS INTEREST

Founded in 1937, the Ohio Prosecuting Attorneys Association (OPAA) is a private, non-profit trade organization that supports the state's 88 elected county prosecutors. Its mission is to assist county prosecuting attorneys to pursue truth and justice as well as promote public safety. OPAA advocates for public policies that strengthen prosecuting attorneys' ability to secure justice for crime victims and serve as legal counsel to county and township authorities. Further, OPAA sponsors continuing legal education programs and facilitates access to best practices in law enforcement and community safety.

In light of these considerations, OPAA urges this Court to affirm the judgment of the Sixth District. At bottom, the defense separation-of-powers challenge seeks a form of judicial supremacy over the other branches of government. The challenge assumes that it is "inherent" that the sentencing judge must be given unfettered discretion to reduce the default lifetime registration duty to ten years. But, in exercising its legislative prerogatives in designing the registration scheme, the General Assembly need not have created any reduction mechanism in the first place; it could choose instead to require lifetime registration for all arsonists. The length of the registration duty was ultimately a question of legislative choice.

Even so, the General Assembly could adopt a more-nuanced approach, requiring the default lifetime duty generally, but allowing the sentencing judge to reduce it if the Executive Branch officials in the case requested the reduction. Rather than violating "separation of powers", this approach giving effect to the agreement of the coordinate branches of government represents in microcosm the kind of "checks and balances" that

are themselves thought to be an important feature of separation of powers. R.C. 2909.15(D)(2)(b) does not violate the separation of powers in seeking the cooperative agreement of the Executive and Judicial Branches before the Legislative Branch's general lifetime duty is reduced.

Ironically, the defense challenge itself would create its own separation-of-powers violation by allowing the defense to cherry-pick the favorable part of the provision allowing a judicial reduction while disregarding the key legislative precondition to the operation of that provision. Surgically severing the need for Executive Branch request would violate basic severance principles and would result in an unconditional judicial reduction provision that the General Assembly would not have approved without the precondition. The Judicial Branch cannot rewrite the laws in this way.

In the interest of aiding this Court's review herein, amicus curiae OPAA offers the present amicus brief in support of the State of Ohio and in support of affirmance.

STATEMENT OF FACTS

Amicus OPAA adopts by reference the procedural and factual history set forth in the State's brief.

ARGUMENT

Amicus Proposition of Law: In designing a statutory provision that could allow a reduction of a legislatively-imposed lifetime duty to register, the General Assembly could precondition the sentencing court's authority to reduce the lifetime duty on the making of a request for such reduction by the prosecutor and investigating agency.

Facing first-degree and second-degree aggravated arson charges, defendant Daniel was allowed to plead guilty to fourth-degree arson as part of a plea agreement under which he would be required to testify against others involved in the arson plot. The plot was to burn down a commercial building, and defendant purchased the lighter fluid and sprayed it on the door of the building, which was then set on fire, resulting in "[s]ignificant damage". (1-16-20 Tr. 3-4) When the defense later claimed that defendant had only "limited involvement", the court noted that defendant had actually been the one who lit the fire. (4-21-21 Tr. 3; 4-28-21 Tr. 10) While this was defendant's first felony conviction, he has had 21 prior misdemeanor convictions. (3-31-21 Tr. 4)

Defendant's arson conviction triggered the application of Ohio's arson-registration law. For those convicted of an arson offense, the General Assembly generally imposes a lifetime annual registration duty that is subject to a narrow reduction provision. The defense is raising a separation-of-powers challenge to the reduction provision, and, for the following reasons, that challenge should be rejected. Even if the separation-of-powers challenge were found to have merit, the end result would be to sever the reduction provision in its entirety, thereby still leaving defendant subject to the lifetime registration requirement.

A.

The reduction provision allows the sentencing court to reduce the duty to not less

than ten years, but only if the prosecutor and investigating agency request the reduction. As provided in R.C. 2909.15(D)(2):

> (a) Except as provided in division (D)(2)(b) of this section, the duty of an arson offender or out-of-state arson offender to reregister annually shall continue until the offender's death.
>
> (b) The judge may limit an arson offender's duty to reregister at an arson offender's sentencing hearing to not less than ten years if the judge receives a request from the prosecutor and the investigating law enforcement agency to consider limiting the arson offender's registration period.

The structure and text of these provisions yield some basic observations.

First, pursuant to division (D)(2)(a), a lifetime duty is the general, legislatively-prescribed length of the duty to register.

Second, a reduction is allowed, but only under a limited exception. The language in division (D)(2)(a) – "Except as provided in division (D)(2)(b) of this section * * *" – would incorporate all of the operative parts of division (D)(2)(b).

Third, as the defense and its amicus concede, there is a mandatory precondition to the operation of the reduction exception, requiring that the prosecutor and investigating agency request the reduction. "[T]he condition limiting the court's authority gives the Government a power, not a duty," to make the request. See *Wade v. United States*, 504 U.S. 181, 185 (1992).

Fourth, the request for reduction need not be granted by the sentencing judge, who "may" decide to grant the request for a reduction and therefore has discretion in that regard. In effect, the provision gives discretion to the prosecutor and investigating agency in deciding whether to request a reduction, and it creates a similar discretion on

the judge's part in deciding whether to grant that request.

Fifth, the discretion being afforded is not limited to a single option of reducing to only ten years. While the duty cannot be reduced below ten years, the "not less than ten years" language plainly contemplates that a reduction might involve a different number, under which a reduction might be requested for, say, a fifteen-year or twenty-year duty, instead of just ten years. But, in regard to whatever number would be arrived at, it would first require a request by the prosecutor and investigating agency, which would then be subject to approval by the sentencing judge.

B.

The defense has the burden of proving unconstitutionality beyond a reasonable doubt. *State v. Gill*, 63 Ohio St.3d 53, 55 (1992). The General Assembly has broad legislative power and "may pass any law unless it is specifically prohibited by the state or federal Constitutions." *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas*, 9 Ohio St.2d 159, 162 (1967).

> "In determining whether an act of the Legislature is or is not in conflict with the Constitution, it is a settled rule, that the presumption is in favor of the validity of the law. The legislative power of the state is vested in the General Assembly, and *whatever limitation is placed upon the exercise of that plenary grant of power must be found in clear prohibition by the Constitution*. The legislative power will generally be deemed ample to authorize the enactment of a law, unless the legislative discretion has been qualified or restricted by the Constitution in reference to the subject matter in question. If the constitutionality of the law is involved in doubt, that doubt must be resolved in favor of the legislative power. The power to legislate for all the requirements of civil government is the rule, while a restriction upon the exercise of that power in a particular case is the exception."

Jackman, 9 Ohio St.2d at 162, quoting *State, ex rel., v. Jones, Auditor*, 51 Ohio St. 492, 503, 504 (1894) (emphasis in *Jackman*).

In *State ex rel. Dickman, v. Defenbacher*, 164 Ohio St. 142 (1955), this Court emphasized that the constitutional violation must be clearly established.

> - A legislative act is *presumed in law to be within the constitutional power* of the body making it, whether that body be a municipal or a state legislative body.
>
> - That presumption of validity of such legislative enactment cannot be overcome unless it appear that there is a *clear conflict* between the legislation in question and some particular provision or provisions of the Constitution.
>
> - The question, whether a law be void for its repugnancy to the Constitution, is, at all times, *a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case*. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels *a clear and strong conviction of their incompatibility* with each other.
>
> - *Every possible presumption* is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.
>
> - To repeat what has been so often suggested by courts of justice, that when called upon to pronounce the invalidity of an act of legislation * * * [they will] never declare a statute void, unless the nullity and invalidity of the act are placed, in their judgment, *beyond reasonable doubt*.
>
> - But while the right and duty of interference in a proper

> case, are thus undeniably clear, the principles by which a court should be guided, in such an inquiry, are equally clear, both upon principle and authority * * * and *it is only when manifest assumption of authority, and clear incompatibility between the Constitution and the law appear, that the judicial power can refuse to execute it*. Such interference can never be permitted in a doubtful case.
>
> - If under any possible state of facts the sections [of the law] would be constitutional, this court is bound to presume that such facts exist.
>
> - Any doubt as to the constitutionality of a statute will be resolved in favor of its validity.
>
> - Every reasonable presumption will be made in favor of the validity of a statute.

Dickman, 164 Ohio St. at 147-49 (emphasis added; quoting several cases); *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 127 Ohio St.3d 511, 2010-Ohio-6207, ¶¶ 10-11.

A court's power to invalidate a statute "is a power to be exercised only with great caution and in the clearest of cases." *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, ¶ 16. Laws are entitled to a "strong presumption of constitutionality," and any party challenging the constitutionality of a law "bears the burden of proving that the law is unconstitutional beyond a reasonable doubt." Id.

In the present case, the defense cannot meet its burden of showing clear unconstitutionality beyond a reasonable doubt.

C.

The setting up of registration mechanisms is a matter of legislative prerogative. "While some may question whether the registration requirements are the best way to

further public safety, questions concerning the wisdom of legislation are for the legislature. Whether the court agrees with it in that particular or not is of no consequence. If the legislature has the constitutional power to enact a law, no matter whether the law be wise or otherwise it is no concern of the court. It is undisputed that the General Assembly is the ultimate arbiter of public policy and the only branch of government charged with fulfilling that role." *State v. Blankenship*, 145 Ohio St.3d 221, 2015-Ohio-4624, ¶ 37 (plurality) (brackets, ellipses, citations, quote marks all omitted). "Questions regarding whether this registration duty is necessary and appropriate in these circumstances * * * are matters of policy that are the province of the General Assembly, the arbiter of public policy in Ohio." Id. ¶ 72 (O'Donnell, J., and Kennedy, J., concurring in judgment only). Judicial review "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices" and does not "authorize 'the judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.'" *Heller v. Doe*, 509 U.S. 312, 319 (1993) (citations omitted). "[A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *Am. Assoc. of Univ. Professors v. Central State University*, 87 Ohio St.3d 55, 58 (1999) (quoting another case).

Accordingly, as a matter of public policy, the General Assembly itself would be the arbiter of what length of registration should apply. "Under the rational basis standard, we are to grant substantial deference to the predictive judgment of the General Assembly." *State v. Williams*, 88 Ohio St.3d 513, 531 (2000). It is not an inherent part of the judicial role that the judicial branch would have a say in the length of registration.

Even when the General Assembly would create a reduction mechanism, there would be no constitutional imperative that the issue of reduction be assigned to the judicial branch or that the judicial branch have the sole discretion to decide whether a reduction is warranted. The General Assembly could make reduction a shared responsibility between Executive Branch officials who investigated and prosecuted the offender and the judge who then can approve their recommendation of a reduction. The legislature in fact *honors* the separation of powers in this regard by involving both of the other branches in the decision.

The General Assembly was exercising its plenary legislative power to find that a lifetime duty is generally appropriate. But it was then allowing the other two branches to override the general lifetime duty if they concur on the reduction. "[W]e have never held that the Constitution requires that the three branches of Government 'operate with absolute independence.'" *Morrison v. Olson*, 487 U.S. 654, 693-694 (1988).

D.

While the defense claims that arson registration is "punitive", that argument makes no difference to the constitutional separation-of-powers analysis. Indeed, even when analyzed as a "punitive" measure, arson registration easily survives a separation-of-powers challenge.

Nevertheless, it is relevant to note that Ohio's statutory scheme for the registration of arson offenders represents a civil regulatory and remedial measure and is not a matter of "sentencing". The leading appellate decision on that point is *State v. Caldwell*, 2014-Ohio-3566, 18 N.E.3d 467 (1st Dist.) (DeWine, J., writing), with other appellate courts following suit. See *State v. Wright*, 6th Dist. No. L-19-1213, 2021-Ohio-

364, ¶¶ 9-17; *State v. Jones*, 6th Dist. No. L-16-1014, 2017-Ohio-413, ¶¶ 26-27; *State v. Galloway*, 2015-Ohio-4949, 50 N.E.3d 1001 (5th Dist.); *State v. Perdue*, 2022-Ohio-722, 185 N.E.3d 683, ¶ 19 (2nd Dist.); *State v. Rogers*, 8th Dist. No. 105335, 2017-Ohio-9161, ¶ 25; see, also, *State v. Reed*, 2014-Ohio-5463, 25 N.E.3d 480, ¶¶ 73-85 (11th Dist.) ("merely remedial"). As stated in *Caldwell*, "[r]egistration programs have 'long been a valid regulation technique with a remedial purpose.'" *Caldwell*, ¶ 35, quoting *State v. Cook*, 83 Ohio St.3d 404, 418 (1998).

The defense points to this Court's decision in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, which addressed sex-offender registration requirements under the Adam Walsh Act (AWA) as effective in 2008. The *Williams* Court determined that the AWA was "punitive" and could not be applied to pre-effective date offenses. But, as detailed in *Caldwell*, there are substantial differences between arson registration and AWA registration so as to distinguish *Williams* and allow arson registration to be characterized as remedial. *Caldwell*, ¶ 34 ("differ * * * in significant ways"; "considerable differences"; "markedly different"). This Court has likewise emphasized that *Williams* only concluded that the AWA scheme *as a whole* and *in the aggregate* amounted to a punitive scheme. *State v. Dangler*, 162 Ohio St.3d 1, 2020-Ohio-2765, ¶ 22. Arson registration on the whole falls far short of the aggregate effect of the AWA provisions, and, therefore, *Williams* is simply inapposite.

E.

Even if Ohio's arson-registration statutes were deemed "punitive", that conclusion would create no separation-of-powers issue. To be sure, the imposition of sentence is a judicial function, but the available length and scope of whatever sentence

can, or should, or must, be imposed is ultimately a legislative matter. The legislature has broad, plenary discretion in prescribing crimes and fixing punishments. *State v. Morris*, 55 Ohio St.2d 101, 112 (1978); see, also, *State v. Taylor*, 138 Ohio St.3d 194, 2014-Ohio-460, ¶ 12. "[A]t all times it is the power of the General Assembly to establish crimes and penalties." *Morris*, 55 Ohio St.2d at 112-13. "[T]he power to define crimes and establish penalties rests with the General Assembly *alone*." Id. at 113 (emphasis added).

This legislative prerogative includes "the power to define criminal punishments without giving the courts any sentencing discretion." *Chapman v. United States*, 500 U.S. 453, 467 (1991). "Mandatory sentencing laws enacted pursuant to this authority do not usurp the judiciary's power to determine the sentence of individual offenders." *State v. Campa*, 1st Dist. No. C-010254, 2002-Ohio-1932. Mandatory-sentencing requirements are constitutional. *State, ex rel. Owens, v. McClure*, 48 Ohio St.2d 1 (1976). "Ohio courts have continually held that mandatory sentencing legislation does not violate the separation of powers doctrine and we will not stray from that controlling precedent." *State v. Graham*, 12th Dist. No. CA2008-07-095, 2009-Ohio-2814, ¶ 80, citing *State v. Thompkins*, 75 Ohio St.3d 558 (1996); *State v. Atkinson*, 9th Dist. No. 19CA011481, 2020-Ohio-3522, ¶¶ 36-37. In short, as a matter of separation of powers, the *legislature* has the preeminent role in setting up sentencing (even if arson registration is viewed as a "punitive" matter).

Even if R.C. 2909.15(D)(2)(b) is treated as reducing a "sentence", the defense challenge on separation-of-powers grounds fails for even more reasons. Just as courts have no inherent power to suspend execution of sentence, see *Municipal Court v. Platter*,

126 Ohio St. 103 (1933), paragraph three of the syllabus, they would have no inherent power to reduce an otherwise-applicable sentence provided by law. For example, statutes created by the General Assembly would be the exclusive means for a court to have the authority to grant a reduction through early release, and that statutory authority must be strictly construed. *State v. Smith*, 42 Ohio St.3d 60, 61 (1989). "The Ohio Legislature having dealt with the subject, and having made certain provisions and certain exceptions thereto, it will be presumed that the Legislature has exhausted the legislative intent, and that it has not intended the practice to be extended further than the plain import of the statutes already enacted." *Madjorous v. State*, 113 Ohio St. 427, 433 (1925).

Even in the criminal-sentencing context, the law can require the Executive Branch's concurrence in the reduction of an otherwise-applicable length of sentence. For example, the federal courts have rejected separation-of-powers objections to the requirement under federal law that the prosecution be the party to file a motion for certain types of sentence reduction. *United States v. Stonerock*, 363 Fed.Appx. 338, 343-44 (6th Cir. 2010) (collecting cases); *United States v. Spees*, 911 F.2d 126, 127-28 (8th Cir. 1990); *United States v. Huerta*, 878 F.2d 89, 91-93 (2nd Cir. 1989); *United States v. Ayarza*, 874 F.2d 647, 652-53 (9th Cir. 1989); *United States v. Miller*, 645 Fed.Appx. 211, 221 (3rd Cir. 2016) ("Crews ignores the fact that a statute * * * gives the Government authority to make the decision whether to file the motion and that this statutory mandate is not a usurpation of judicial power."). Allowing the court to make the reduction decision, but only with the recommendation of the Executive Branch, is an innovation that does not violate separation of powers.

In concluding that division (D)(2)(b) violates separation of powers, the Fourth District in *State v. Dingus*, 2017-Ohio-2619, 81 N.E.3d 513 (4th Dist.), relied on *State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790. But *Sterling* is fundamentally different because this Court determined that the DNA-testing provision at issue in *Sterling* related to the determination of guilt or innocence, a core judicial-branch determination. Id. ¶ 34. The reduction provision in R.C. 2909.15(D)(2)(b) is *not* related to guilt or innocence; the defendant's guilt is already established through trial or plea. Nor does the reduction provision require any particular fact-finding to justify the reduction. Instead, the reduction provision relates to a matter that could have been treated as akin to a parole-release determination, which could have been assigned entirely to the Executive Branch if the General Assembly had chosen to do so. See *Woods v. Telb*, 89 Ohio St.3d 504 (2000); *State ex rel. Attorney General v. Peters*, 43 Ohio St. 629 (1885).

F.

Even if the separation-of-powers objection to R.C. 2909.15(D)(2)(b) had merit, that conclusion gains no relief for the defendant. If constitutionally objectionable, division (D)(2)(b) would be severed in its entirety, thereby resulting in the defendant (still) being subject to the lifetime duty to register set forth in division (D)(2)(a).

The defense naturally contends that division (D)(2)(b) could be surgically altered to leave the court with the unconditional discretion to reduce the lifetime duty to ten years. Under this assumption, division (D)(2)(b) would be altered to read, as follows: "The judge may limit an arson offender's duty to reregister at an arson offender's sentencing hearing to not less than ten years ~~if the judge receives a request from the prosecutor and the investigating law enforcement agency to consider limiting the arson~~

~~offender's registration period~~." R.C. 2909.15(D)(2)(b). But no such surgical alteration would be allowed.

The supposed "unconstitutional part", i.e., the conditional "if" clause, would be severable only if it could "stand by itself." *Geiger v. Geiger*, 117 Ohio St. 451, 466 (1927) ("Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself?"). But the "if" clause makes no sense by itself. Instead, it serves as a precondition to the court's authority to reduce the default lifetime duty.

Surgical severance of the "if" clause alone would also violate the principle barring such severance if the language is "so connected" as to be inseparable from the other language of the provision. *Geiger*, 144 Ohio St. at 466. "Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out?" Id. Here, there is an inherent connection between the "if" clause and the remainder of division (D)(2)(b).

The "so connected" concept prevents a surgical severance of a conditional clause. If the constitutional and unconstitutional parts "are so mutually connected with and dependent on each other, as conditions, considerations, or compnsations for each other as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, *all the provisions which are thus dependent, conditional, or connected must fall with them*." *Allen v. Louisiana*, 103 U.S. 80, 84 (1880) (quoting another case; emphasis added). As this Court has recognized, the "constitutional portion

of [a] statute cannot be severed from [the] unconstitutional portion where the latter portion is a condition of the former". *Rzepka v. City of Solon*, 121 Ohio St.3d 380, 2009-Ohio-1353, ¶ 32. Accordingly, the test for severance prevents a surgical severance of an "express *condition*" on the effectiveness of the part that would remain. Id. (emphasis in *Rzepka*). An express condition "is incapable of being severed from the remainder". Id. ¶ 33

Division (D)(2)(b) only creates a *conditional* authority on the part of the judge to reduce the length of the duty to register. Removing the condition would negate the legislature's intent that such reductions would occur only upon the request of the Executive Branch officials involved in the case. Surgically removing the "if" clause would replace a nuanced, conditional authority with a unilateral, unconditional authority. The plain legislative intent was to protect the General Assembly's prerogative to require a lifetime duty unless the Executive and Judicial Branches agreed to a particular reduction in a particular case. The "Except" clause in division (D)(2)(a) incorporates all of the requirements from division (D)(2)(b), including the request requirement, and, absent such request by the prosecutor and investigating agency, the General Assembly would leave its lifetime duty in place.

In this regard, it is important to note that R.C. 1.50 would not authorize a surgical severance of a conditional clause. R.C. 1.50 provides that "[i]f any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections *which can be given effect without the invalid provision* or application, and to this end the provisions are severable." (Emphasis added) The "invalid provision"

here is the precondition that operates to prevent the reduction unless the prosecutor and investigating agency request the reduction. The reduction provision cannot be "given effect" without the "if" clause that operates as a mandatory precondition to its operation, and surgical severance would change the intended effect of the remaining language from a conditional reduction mechanism to an unconditional and unilateral reduction provision.

Rejecting the defense's argument for surgical severance is also consistent with the usual principle that exceptions to a general rule are read narrowly in order to preserve the primary operation of the statute. *Maracich v. Spears*, 570 U.S. 48, 60 (2013). The conditional exception is meant to have a narrow construction, but surgical severance would *expand* the exception into an unconditional provision.

Surgically deleting the "if" language would also disregard the other ways in which the General Assembly might have designed the reduction provision. The request provision serves as an important check, as the General Assembly could believe that, in requiring a request from Executive Branch officials, there would be agreement by those officials and the court that there are substantial reason(s) for the reduction being implemented. Requiring such a request also helps ensure that the length of the reduction is justified as well, thereby providing a check on what each branch might think in terms of whether the duty should be reduced to ten, or fifteen, or twenty years, or some other specific number that is not less than ten years.

Had the General Assembly known that the request requirement would be deleted, it may have still created a reduction provision, but with substantive standards that constrained the court in determining whether to grant a reduction and/or in determining

what length of reduction should be applied. Nothing would have required that the General Assembly create a reduction provision, let alone a reduction provision which imposed no particular standards controlling the judge's granting of relief.

In the final analysis, if division (D)(2)(b) violates the separation of powers because it requires an Executive Branch request, then the entire provision allowing reduction would be severed. This would mean that the default lifetime duty imposed by R.C. 2909.15(D)(2)(a) would apply anyway, even if division (D)(2)(b) would be found to be violative of separation of powers.

CONCLUSION

For the foregoing reasons, amicus curiae OPAA urges that this Court affirm the judgment of the Sixth District Court of Appeals.

Respectfully submitted,

/s/ Steven L. Taylor
STEVEN L. TAYLOR 0043876
Counsel for Amicus Curiae OPAA

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was e-mailed on November 28, 2022, to the following: Evy Jarrett, ejarrett@co.lucas.oh.us, Assistant Prosecuting Attorney, Lucas County Courthouse, Toledo, Ohio 43604, counsel for State of Ohio; Edward J. Stechschulte, estechschulte@ioriolegal.com, Kalniz, Iorio & Reardon Co., LPA, 5550 W. Central Avenue, Toledo, Ohio 43615, counsel for defendant; R. Jessica Manungo, jessica.manungo@opd.ohio.gov, Assistant State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215, counsel for amicus curiae Ohio Public Defender; Benjamin M. Flowers, Solicitor General, benjamin.flowers@ohioago.gov, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, counsel for amicus curiae Ohio Attorney General Dave Yost.

/s/ Steven L. Taylor
STEVEN L. TAYLOR 0043876