The Supreme Court of Ohio

CHRISTOPHER R. HICKS,	:	**Case No. 2023-0580**
	:	
Realtor-Appellant,	:	**On Appeal from the**
	:	**Twelfth District Court of Appeals**
v.	:	**Clermont County, Ohio**
	:	
UNION TOWNSHIP, CLERMONT:	:	**Court of Appeals**
COUNTY BOARD OF TRUSTEES	:	**Case No. CA2022-10-057**
	:	
Respondent-Appellee.	:	

MERIT BRIEF OF AMICI CURIAE THE OHIO TOWNSHIP ASSOCIATION, THE COALITION OF LARGE OHIO URBAN TOWNSHIPS, THE OHIO MUNICIPAL LEAGUE, THE COUNTY COMMISSIONERS ASSOCIATION OF OHIO, THE OHIO LIBRARY COUNCIL, THE OHIO SCHOOL BOARDS ASSOCIATION, THE OHIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS, AND THE BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS IN SUPPORT OF RESPONDENT-APPELLEE, UNION TOWNSHIP

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Amici curiae are organizations representing the interests of public local governing bodies and administrators across Ohio. Some of their members comprise the vast majority of duly elected public officials in Ohio who govern counties, cities, villages, townships, and school districts. Others include the vast majority of full-time executive administrators, such as superintendents and treasurers, tasked with operating Ohio's public schools on a daily basis. Whether elected or hired, the members of these "Associations" are dedicated to serving the needs of their communities transparently and efficiently, while respecting their collective privacy interests. The Associations submit this brief in support of respondent-appellee to provide the court with the perspective of a large and diverse group of public officials who share in their concern that a reversal of the Twelfth District Court of Appeals' decision would needlessly add to their administrative burdens, compromise the privacy rights of Ohio citizens, and create a chilling effect on communications between citizens and the government officials who serve them.

II. STATEMENT OF INTEREST OF AMICI CURIAE

Each of the Associations are comprised of members who conduct the business of their respective organizations through public meetings in accordance with Ohio's sunshine laws, including R.C. 149.43.

Ohio Township Association

The Ohio Township Association ("OTA") is a statewide professional organization dedicated to the promotion and preservation of township government in Ohio. OTA, founded in 1928, is organized in eighty-seven (87) Ohio counties and has over 9,000 members, including nearly 100% of the township elected officials in Ohio's 1,308 townships. The OTA provides members with their expertise in township operations, professional development via quality training

and education programs, and legislative advocacy by communicating to Ohio and federal policymakers on important issues and resolutions.

Coalition of Large Ohio Urban Townships

The Coalition of Large Ohio Urban Townships ("CLOUT") is a group of large, urban townships in Ohio that have formed a committee under the auspices of the OTA for the purpose of providing its members with a forum for the exchange of problems, issues and solutions unique to large urban townships. CLOUT also provides input to the OTA. Membership in CLOUT is limited to those townships having either a population of 15,000 or more in the unincorporated area, or a budget over $3,000,000.00.

Ohio Municipal League

The Ohio Municipal League ("OML") was incorporated as an Ohio non-profit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. Currently, the OML represents 730 of Ohio's 931 cities and villages. The OML has six affiliated organizations: the Ohio Municipal Attorneys Association, the Municipal Finance Officers Association, the Ohio Mayors Association, the Ohio Association of Public Safety Directors, the Ohio City/County Management Association, and the Ohio Municipal Clerks Association. On a national basis, the OML is affiliated with the National League of Cities, the International Municipal Lawyers Association, the U.S. Conference of Mayors, and the International City/County Managers Association.

The OML represents the collective interest of Ohio cities and villages before the Ohio General Assembly and the state elected and administrative offices. In 1984 the OML established a Legal Advocacy Program funded by voluntary contributions of the members. This program allows the OML to serve as the voice of cities and villages before the Ohio Supreme Court and the

United States Courts of Appeals and Supreme Court by filing briefs amicus curiae on cases of special concern to municipal governments. The Ohio Municipal League has been accredited by the Ohio Supreme Court as a sponsor of both Continuing Legal Education Programs for attorneys and the required Mayors Court training for Mayors hearing all types of cases.

County Commissioners Association of Ohio

The County Commissioners Association of Ohio (CCAO) founded in 1880, is a statewide Association of Ohio County commissioners and County Council members that promotes the best practices and policies in County governance.

Ohio Library Council

The Ohio Library Council is a statewide association representing the interests of Ohio's public libraries. Its membership is composed of public library systems, library trustees, Friends of the Library groups, library staff members, other library institutions, and library-related commercial vendors. It is the forum in which Ohio's public library community is strengthened through advocacy, education, collaboration, and innovation.

Ohio School Board Association

The Ohio School Boards Association (OSBA) is a nonprofit 501(c)(4) corporation that engages and serves Ohio's public school board members and the diverse districts they represent. More than 700 boards of education representing the city, municipal, local, exempted village and career technical school districts and educational service centers throughout the State of Ohio are members of OSBA. OSBA's services and programs include extensive informational support, advocacy and consulting, board development and training, legal information, and policy service and analysis.

Ohio Association of School Business Officials

The Ohio Association of School Business Officials ("OASBO") is a non- profit corporation that has provided support and services to school district treasurers, Chief Financial Officers, business managers, food service, transportation supervisors and other support staff across the state of Ohio since 1936. Currently OASBO serves more than 1,500 school business officials and more than 170 different vendors. In doing so, OASBO provides members with their expertise in school finance and operations, professional development and legislative advocacy. Specifically, OASBO provides its members with a broad range of training opportunities and mentoring programs in order to advance the profession and create effective and efficient schools.

Buckeye Association of School Administrators

The Buckeye Association of School Administrators ("BASA") was established in 1969, and has served as a non-profit corporation providing assistance to superintendents and other school administrators throughout the state of Ohio. BASA has strived to support and inspire its members in order to develop excellent school systems and advocate for public education. BASA offers many programs to best serve its members including: the Ohio School Leadership Institute, New Superintendent Transition, Executive Coaching and Emerging Leaders Institute. In addition to the above-mentioned programs, BASA also provides its members with a number of other general services including: conflict intervention, contract consultation, legal counsel, superintendent and board relations, technology consultations, school levy and bond issue consultation, and professional development and career advancement opportunities.

While the members of the Associations listed above come from a variety of backgrounds, they are all firmly committed to serving their communities as public officials tasked with conducting the business of local governments. To that end, the Associations share a deep concern

that reversing the decision of the Twelfth District Court of Appeals will needlessly add to their administrative burdens, compromise the privacy rights of Ohio citizens, and create a chilling effect on communications between citizens and the government officials who serve them.

III. STATEMENT OF THE CASE AND FACTS

A. The Public Records Request.

For many years, Union Township (the "Township") periodically produced a newsletter that focused on stories for the community. *Hicks v. Union Township*, 2023-Ohio-874, at ¶ 5. Topics for the newsletter included growing churches in the Township, warnings of different ways scammers operate, tips on preventing and preparing for fires, and information on junk disposal. *Id.* It also included the Township Trustees' meeting schedule, the contact information for each of the Township's departments, and a list of upcoming events within the Township. *Id.*

The newsletter was distributed in three ways. First, it was posted to the Township's website and available for viewing or download. Second, a third-party direct mail vendor created a list of all mailing addresses within the Township, maintained that list, and ensured that the newsletter was mailed to each of those addresses. *Id.* at ¶ 6. Third, the Township allowed individuals to sign-up to receive the newsletter electronically. *Id.* The newsletter was then sent to the individuals that signed up for electronic delivery. *Id.* Neither the physical mailing address list nor the email list were used for any other purpose other than maintaining the contact information for where to send the newsletter. *Id.*

Appellant Christopher R. Hicks ("Appellant" or "Hicks") submitted a public records request for both the email mailing list and the physical mailing list for the newsletter. *Id.* at ¶ 2. The Township denied the request and indicated neither list documents the activities or function of the Township. *Id.* Appellant sought reconsideration of the denial; but the Township again reiterated

that the lists were not a public record and did not document the activities or function of the Township. *Id.*

B. The Proceedings Below.

The day after the denial of Appellant's request for reconsideration, he filed a complaint in the Court of Claims claiming that the Township denied him access to public records pursuant to R.C. 2743.75. *Id.* at ¶ 3. After unsuccessful mediation, the case was referred to Special Master Jeff Clark. *Id.* at ¶ 4. The Special Master concluded that the identity of mail and email recipients of the Township's newsletter did not document the activity or function of the Township. *Id.* at ¶ 12. Because the mailing lists constituted contact information used for administrative convenience, the Special Master found that the mailing lists did not meet the definition of a public record of the Township and were not subject to release under the Public Records Act. *Id.*

Appellant objected to the Special Master's report and recommendation, claiming that he erred in finding that the mailing lists were kept for "administrative convenience." *Id.* at ¶ 13. The Court of Claims overruled Appellant's objection and adopted the Special Master's report and recommendation. *Id.*; *see also Hicks v. Union Twp., Clermont Cty. Trustees*, 2022-Ohio-3558 (Ct. Cl.). The Court of Claims also found that the mailing lists represented contact information used by the Township for administrative convenience and, therefore, did not rise to the level of a public record under the definition set forth in R.C. 149.011(G). *Id.*

The Twelfth District affirmed the Court of Claim's decision. *Hicks*, 2023-Ohio-874, at ¶ 42-43. In its decision, the Twelfth District relied upon this Court's pronouncements of when a record—especially one used for administrative convenience—rises to the level of a public record. *Id.* at ¶ 26-41. The appellate court considered the email list and the physical mailing list separately but reached the same conclusion: neither documented the activity or function of the Township and

were merely kept for administrative convenience. *Id.* One judge dissented from four paragraphs of the majority opinion because he felt that only the physical mailing list likely promoted administrative convenience, but also could document the distribution of the newsletter. *Id.* at ¶ 50 (M. Powell, J., dissenting). However, the Twelfth District correctly explained that the physical list and the email list did not influence the substance or the audience of the newsletter and was merely used for contact purposes. *Id.* at ¶ 26-41. Accordingly, the Court should affirm the Twelfth District's opinion.

IV. ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITION OF LAW

> **Appellant's Proposition of Law No. 1:** Distribution lists (mail and email) curated for the recurring dissemination of government-approved messages, intended to influence public opinion, do document an "other activity" of a Public Office, and are not merely kept for "administrative convenience." They are a public record subject only to appropriate, statutorily supported, redaction.

The Associations lend their support to the Township in upholding the Twelfth District's decision finding that the lists at issue are not public records. Public bodies throughout Ohio use lists for administrative convenience to disseminate all types of information. Whether it is a summer reading program hosted by a public library, a school newsletter issued by a public school, or a community newsletter akin to the one described in the underlying case - in many cases, the information itself may be public record, but the lists are not. This is particularly so in the case of lists whose information is largely populated by those wishing to receive specific information from various government entities, such as the case below where the Township allowed for citizens to provide email addresses where digital copies of the subject newsletters could be sent. The curation of such lists involves little to no decision-making by public entities who provide for them.

The Associations share in their concern that categorizing these lists will not only create additional administrative burden for them to manage. It will also compromise their ability to

maintain the privacy of those citizens who – while they may want to obtain information from their library, school, township, or other municipality, may not want the contact information associated with those communications to be freely available to anybody that asks. A reversal of the underlying decision would compromise the Associations' ability to respect the privacy of their constituents, and inevitably lead to a chilling effect on participation in communication. Whatever value is provided in sharing such contact information for the sake of understanding government functions, it is vastly outweighed by the potential harm that could arise as well. Citizens may well be inclined to sign up for a township newsletter, but that does not mean they wish for their information to be freely provided to somebody who will spam them with unwanted solicitations or political messages.

Appellant states the Twelfth District decision will set back the Public Records Act by (1) universally shifting the burden of proof whenever an address is involved, (2) narrowing the definition of what constitutes "documenting a function of government," (3) preventing citizens from monitoring government in a critically important First Amendment area, and (4) radically expanding the definition of "administrative convenience."

But the burden of proof is "clear and convincing" only when proving a document is a public record in the first place. Courts maintain a presumption against the government that must be overcome when examining exceptions to disclosure of public records. If that presumption is not overcome, then the public records must be disclosed. Moreover, this Court's precedent, the attorney general's guidance, and even Appellant's theoretical arguments do not support categorizing the lists at issue as public records. Indeed, the meaning of "administrative convenience" has not been expanded by the underlying decision, because "administrative

convenience" and "public record" are not mutually exclusive. For these reasons, the Court should affirm the Twelfth District's opinion.

A. The burden of proof is on the requester to prove by clear and convincing evidence that the mailing lists are public records.

The Public Records Act only applies to public records and does not apply to every item created, received, or maintained by a public office. *State ex rel. Dispatch Printing Co. v. Johnson*, 196 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶ 29. "While the process established for proceedings under R.C. 2743.75 may be new, the fundamental legal principles that govern disputes over access to alleged public records are not." *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 163 Ohio St.3d 337, 2020-Ohio-5371, ¶ 10. Appellant must prove by clear and convincing evidence that the items requested "document the organization, functions, policies, decisions, procedures, operations, or other activities of [an] office." R.C. 149.011(G); *see also Johnson*, 2005-Ohio-4384, at ¶ 19. The requester bears the burden of proof to establish that a document is a public record. *Viola v. Ohio Atty. Gen., Pub. Record Unit*, 10th Dist. Franklin No. 21AP-126, 2021-Ohio-3828, ¶ 16. If Appellant fails to prove this, the requested items are not subject to disclosure under the Public Records Act. *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, ¶ 9.

Appellant, without any citation or support, claims that the Twelfth District's holding sets back the Public Records Act because it "will universally burden shift whenever any address is involved." Instead of the government needing to prove an *exception* exists in the Public Records Act, the citizen will now always need to prove, by clear and convincing evidence, that any address is not kept for vaguely defined 'administrative convenience.'" *See* App. Memo. in Support of Jur. at 5, May 3, 2023 (emphasis added).

This is a misstatement of the burden of proof. The Twelfth District's holding does not require *exceptions* to be proven by clear and convincing evidence. Exceptions to disclosure of public records are, and have always been, presumed against the government. *State ex rel. Cincinnati Enquirer v. Pike County Coroner's Office*, 153 Ohio St.3d 63, 2017-Ohio-8988, ¶ 15. The burden is on the requestor to prove a document is a *public record* in the first place. *Johnson*, 2005-Ohio-4384, at ¶ 19. Once a requestor establishes that the item requested is a public record, then "[a]ny doubt of whether to disclose public records is to be resolved in favor of providing access to such records." *Pike County Coroner's Office*, 2017-Ohio-8988, at ¶ 15. quoting *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376, 662 N.E. 2d 334.

Appellant further misstates the burden of proof by arguing, "the citizen will now always need to prove, by clear and convincing evidence, that any address is not kept for vaguely defined 'administrative convenience.'" Public records and administrative convenience are not mutually exclusive. The Twelfth District did not say there was a burden to prove the mailing lists were not being kept for administrative convenience. The Twelfth District also did not say that items of administrative convenience cannot also "document the organization, functions, policies, decisions, procedures, operations, or other activities." Instead, the Twelfth District required Appellant to establish that the addresses were used for something more than administrative convenience, specifically a decision-making purpose. *Hicks*, 2023-Ohio-674, at ¶ 37.

For example, in *Jones-Kelley*, names and addresses of foster caregivers kept for administrative convenience also were public records, because they documented the Department of Job and Family Services' function of certifying and maintaining adequate foster caregivers. *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770. In the case of a newsletter, names and addresses kept for administrative purposes could be public records if

Appellant presented evidence that they were being used for decision-making purposes as to what the substance of the newsletter will be or who the Township will omit from receiving the newsletters. *See Johnson*, 2005-Ohio-4384, at ¶ 25; *Bond*, 2002-Ohio-7117, at ¶ 12. No evidence on the record supports that being the case here.

Ohio precedent has not created a "universal 'address' exemption" in the Public Records Act. The burden of proof is the same in every public records case regardless of whether an address is involved. The Twelfth District put the burden of proof on the requestor to establish by clear and convincing evidence the mailing lists "document the organization, functions, policies, decisions, procedures, operations, or other activities" of the Township. *Hicks*, 2023-Ohio-874, at ¶ 5. Appellant has not presented any evidence, let alone clear and convincing evidence, suggesting this is the case. Accordingly, the Court should affirm the Twelfth District's opinion.

B. The mailing lists are not public records, and a finding otherwise overturns decades of precedent.

Appellant claims the Twelfth District's holding "narrow[s] the definition of what constitutes 'documenting a function of government'" and "prevent[s] citizens from monitoring government in a critically important [First] Amendment area." *See* App. Memo. in Support of Jur. at 5, May 3, 2023. These claims rely on attenuated arguments and ignore well-established precedent. While such arguments may be appropriate for a law review article, they do not aid the Court in determining whether mailing lists are public records. These theories take the Court away from the issue at hand. There is only one question the Court needs to resolve: whether the mailing lists for a newsletter highlighting current events and administrative news within a community qualifies as an item of organization, functions, policies, decisions, procedures, operations, or other activities. The answer is undoubtedly, no.

i. Ohio law does not support a finding that the contact lists are public records.

Ohio precedent on what documents an organization, functions, policies, decisions, procedures, operations, or other activities is well-established. *See, e.g., Johnson*, 2005-Ohio-4384; *Bond*, 2002-Ohio-7117; *McCleary v. Roberts*, 88 Ohio St.3d 365 (2000). "Simply because an item is received and kept by a public office does not transform it into a record under R.C. 149.011(G). . . ." *Johnson*, 2005-Ohio-4384, at ¶ 29 (holding that state-employees' home addresses represented contact information used for administrative convenience rather than documenting the organization, functions, policies, decisions, procedures, operations, or other activities of a state agency). A policy of collecting and retaining contact information documents is a policy and procedure of an office, but the contact information itself does not serve any similar purpose. *Id.* at ¶ 26.

When information is not used for decision-making purposes but is instead used solely for administrative purposes such as contact, the information is not a public record. *Bond*, 2002-Ohio-7117, at ¶ 12-13 (finding that juror questionnaire response information for identifying and contacting jurors is not a public record). Personal information provided by private citizens that is maintained by the government does not provide any insight into government operations. *McCleary*, 88 Ohio St.3d 365, 367-370 (holding that identifying personal information of non-employees does nothing to document a city department's operations).

The mail and email distribution lists are not public records under Ohio law. The Twelfth District went step-by-step in correctly comparing the case at hand to this Court's precedent. *See Hicks*, 2023-Ohio-874, ¶ 34. The names and email addresses maintained by the Township do not document any aspect of the Township's newsletter program. In *Bond*, the Court found that disclosure is not required when the information sought reveals nothing about the agency's own conduct. *Bond*, 2002-Ohio-7117, at ¶ 11.

This case is directly in line with *Bond*. The email distribution lists are used for contact, not decision-making purposes. *See Hicks*, 2023-Ohio-874, at ¶ 5; *see also Id.* at ¶ 12; *Johnson*, 2005-Ohio-4384, at ¶ 25. The lists are not used in deciding what should and should not be included in the newsletter, or who should and who should not be omitted from receiving the newsletter. Rather, the information is merely kept for administrative convenience and contact purposes. *Hicks*, 2023-Ohio-874, at ¶ 5. The email and mailing addresses do not provide any insight into the Township's newsletter program beyond what is already available from accessing the newsletter itself. Accordingly, the Court should affirm the Twelfth District's opinion.

ii. The attorney general's factors in determining what constitutes a public record weigh in favor of non-disclosure.

The attorney general's factors in what constitutes a public record weigh in favor of non-disclosure. An Attorney General Opinion examined whether the personal email addresses of the recipients of an email are themselves public records. Atty.Gen.Ops. No. 2014-029, 1. "Whether personal email addresses that are contained in a public record are themselves public records is a fact-specific inquiry that must be determined on a case-by-case basis." *Id.* The Court must consider whether disclosure "would facilitate the public's ability to monitor the functions of the township in performing its statutory duties, and whether the township actually used the email addresses in making decisions or in performing its functions." *Id.* The factors to consider include:

> (1) [W]hether the email was sent as part of the township's or its employees' official duties, (2) whether a township resolution required the sending of such email, (3) whether the recipients are constituents of the township, (4) whether the recipients' email addresses are maintained in a database of the township, and (5) whether the recipients provided their email addresses to the township for purposes of receiving an email that is sent by the township as part of its official activities.

Id. at 9-10. Affirmative responses weigh in favor of disclosure. *Id.* at 10. Personal email addresses that are unrelated to the performance of township responsibilities will not shed light on the functions and activities of the township. *Id.*

The Township does not use mailing or emailing addresses in making decisions on what is incorporated in the newsletter. Appellant suggests, without citation or evidence, that the mailing lists are "a government designed and implemented communication system intended to influence a favorable opinion of government and its programs." App. Br. at 14, Sep. 1, 2023.

But the record indicates that the "programs" highlighted in the newsletter include stories on growing churches in the Township, warnings of ways scammers operate, tips to prevent fires, and information on junk disposal. *Hicks*, 2023-Ohio-874, at ¶ 5. Appellant may have a case if Appellant presented evidence that the government uses the mailing list to monitor demographics of the audience so that it can proactively use "propaganda" to sway constituents into a pro-government mindset. However, Appellant's arguments are conclusory and lack evidentiary support. The record does not present any evidence that the lists are used for anything other than contact purposes. The mailing lists are not kept for the purpose of deciding *what* goes in the newsletter, but instead are maintained so the Township knows *where* to send the newsletter. *Id.* at ¶ 5-6.

The attorney general's factors support these findings as well. First, the *creation* of a newsletter is an official duty, but *maintaining* a list of contacts is not. The contact lists are not used for decision-making purposes. *Id.* The same newsletter is sent to every person who subscribes by email or who has a mailing address on record. *Id.* Second, a township resolution did not require the sending of the email. *Id.* at ¶ 5. Third, the recipients on the email contact list are not limited to Union Township residents. *Id.* at ¶ 39. Anyone across the globe can subscribe to receive the

newsletter. *Id.* Fourth, email addresses are maintained in a database of the Township. *Id.* at ¶ 5. This is the only factor in Appellant's favor. Fifth, the distribution of the Township newsletter is not part of the Township's official operations. Four of the five factors weigh against disclosure. Accordingly, the Court should affirm the Twelfth District's opinion.

iii. Appellant's theoretical arguments are contrary to public policy.

Appellant, lacking both evidence and case authority to support disclosure of the email and mail distribution lists under Ohio law, seeks to propose an entirely new method of analyzing Ohio public records requests. Appellant's Proposition of Law seeks to undo over two decades of well-settled precedent. Appellant claims the Twelfth District's holding will lead down a slippery slope "justify[ing] any manner of Orwellian, secret message public manipulation… A slippery slope whose consequences will be both immediate and long term as the decisions are weaponized to expand government secrecy." App. Br. at 16, Sep. 1, 2023. Despite this hyperbole, Appellant fails to articulate why a self-selecting email list, or an all-encompassing resident mailing list, both created without any filter or culling by government decisionmakers, document a "function of government."

Indeed, Ohio has a sound and equitable interpretation on what it means to document a function of government. The Twelfth District's opinion did not narrow this definition. Appellant is not limited in his ability to request public records that document government functions such as newsletters, government employee wage information, meeting minutes, and other activities of the office. Appellant can even request information that influenced the decision-making of the Township's newsletter. *See Johnson*, 2005-Ohio-4384, at ¶ 25; *Bond*, 2002-Ohio-7117, at ¶ 12. However, the mailing lists here do not document a function of government because they are not used for decision-making purposes. *See Johnson*, 2005-Ohio-4384, at ¶ 25; *Bond*, 2002-Ohio-

7117, at ¶ 12. This holding is consistent with a long line of cases stating that personal information revealing little or nothing about an agency's activities or conduct is not a public record under R.C. 149.011(G). *See Id.* at ¶ 11; *McCleary*, 88 Ohio St.3d at 368-369; *Johnson*, 2005-Ohio-4384, at ¶ 29.

Similarly, Appellant's arguments pertaining to the First Amendment lack citation to any supporting legal authority. Appellant claims the Twelfth District's opinion will reduce the "right of citizens to monitor government (right of access) and to react to government (redress grievances)" and "allow undetectable discrimination, shadow banning, and redlining in the way government communicates to people." App. Br. at 19, Sep. 1, 2023, emphasis in original.

The Supreme Court of the United States disagrees with Appellant's theories. "There is an undoubted right to gather news 'from any source by means within the law,' but that affords no basis for the claim that the First Amendment compels others-private persons or governments-to supply information" unless required under the law. *Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978). Nothing prevents Appellant from obtaining government information through legal means. However, under Ohio law, Appellant cannot obtain government information by a public records request unless the information *is* a public record. As noted in *Houchins*, the First Amendment does not compel the government to supply information that it is not required to supply under the law, as the case is here. *Id.* A finding otherwise is contrary to First Amendment protections and public policy. Disclosure of information about private citizens in this scenario does not monitor the government. It threatens the privacy of individuals, creates a chilling effect on civic engagement, and harms the efficiency of local governments throughout the state. Accordingly, the Court should affirm the Twelfth District's opinion.

C. "Administrative convenience" was not expanded by the Twelfth District's holding because "administrative convenience" and "public records" are not mutually exclusive.

Appellant raises concern over administrative convenience becoming a growing exception to the dissemination of public records. Appellant argues the Twelfth District's opinion "will radically expand the meaning of 'administrative convenience' in a manner that undermines the Public Records Act. 'Administrative convenience' will become a de facto exception to any public record request involving a name, mail address or an email address."

However, even the lower court's dissent correctly points out that public records and administrative convenience are not mutually exclusive terms. *Hicks*, 2023-Ohio-874, at ¶ 50 (Powell, J., dissenting). A record that "promotes administrative convenience does not mean that it may not also 'document the organization, function, policies, decisions, procedures, operations, or other activities of the office.'" *Id.*; *see also Jones-Kelley*, 2008-Ohio-1770 (holding that names and addresses of foster caregivers held for administrative convenience were public records because they also were used for documenting the activities of the office such as a department's duty of maintaining a list of adequate caregivers). Appellant's concern over administrative convenience becoming a growing exception is unfounded because a document kept for administrative convenience can still be a public record. Accordingly, the Court should affirm the Twelfth District's opinion.

D. The lower court's dissent assumes facts that Appellant has not established by clear and convincing evidence.

The lower court's dissent argues that the Township could be "selectively distributing its approved messages, omitting parts of the community, or shadow-banning some members of the community." *Hicks*, 2023-Ohio-874, at ¶ 45, 51 (Powell, J., dissenting). However, this rationale assumes Appellant has shown by clear and convincing evidence that the Township is selectively

targeting a specific audience with its mailing list. Appellant presented no evidence showing the Township used the mailing lists to exert influence over certain groups or selectively distribute or omit certain demographics of the community. Appellant makes conclusory statements that the Township *could* be using the contact lists for decision-making purposes. *Hicks*, 2023-Ohio-874, at ¶ 11. The burden of proof was for Appellant to establish by clear and convincing evidence that this fact was in place. He did not. The mailing lists are simply for contact and administrative purposes, nothing more.

Lastly, the dissent tries to distinguish the mailing list from the emailing list. *Id.* at ¶ 50. The analysis does not change because the mailing distribution list was put together by a third party and contains the mailing addresses of everyone in the Township. Appellant must still show clear and convincing evidence that the address list influences the substance of the newsletter or assists the Township in selectively adding to or omitting certain portions of the newsletter based on a target audience. *Bond,* 2002-Ohio-7117, at ¶ 12-13; *Johnson*, 2005-Ohio-4384, at ¶ 19. The contact lists do not "document the organization, functions, policies, decisions, procedures, operations, or other activities of the office," because the mailing lists are not used for decision-making purposes. R.C. 149.011(G); *Bond,* 2002-Ohio-7117, at ¶ 12. Accordingly, the Court should affirm the Twelfth District's opinion.

V. CONCLUSION

Amici curiae Associations and their members will not be able to efficiently conduct the business of the public bodies they govern if the underlying decisions are reversed. Moreover, a reversal of the decisions is at odds with Ohio law. For these reasons, the Associations respectfully request that the judgment of the court of appeals be affirmed in favor of Appellee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copy of the foregoing Brief of *Amici Curiae* in Support of Respondent-Appellee, has been served in accordance with S. Ct. Prac. R. 3.11 via electronic mail this 23rd day of October, 2023, upon the following counsel:

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