

**In the
Supreme Court of Ohio**

**LOOK AHEAD AMERICA,
and MERRY LYNNE RINI,**

Plaintiffs-Appellants,

vs.

**STARK COUNTY BOARD OF
ELECTIONS, *et al.***

Defendants-Appellees.

Case No. 2023-1059

**Appeal from Stark County Court of Appeals,
Fifth Appellate District Case No. 2022-CA-
00152**

**AMICUS BRIEF OF GATEHOUSE MEDIA OHIO HOLDINGS II, INC. D/B/A THE
COLUMBUS DISPATCH, THE CINCINNATI ENQUIRER, A DIVISION OF
GANNETT GP MEDIA, INC. AND COPLEY OHIO NEWSPAPERS, INC. D/B/A
AKRON BEACON JOURNAL**

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I. INTRODUCTION AND SUMMARY

In this case, the Fifth District Court of Appeals, when faced with a matter under the Ohio Open Meetings Act, opted for a construction of the Act that would restrict access, rather than promote access. This is directly contrary to the admonition in the Act, which says "This section shall be **liberally construed** to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." R.C. 121.22(A) (emphasis added).

Here, the issue for the Fifth District Court of Appeals was the meaning of R.C. 121.22(G)(2). The text of R.C. 121.22(G)(2) provides as follows:

To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use property in accordance with section 505.10 of the Revised Code, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

Appellants contend that the condition required for permitting an executive session—"if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest"—applies to the purchase of public property as well as the sale of public property. The Fifth District agreed with the Appellees, and held that the condition applies only to the sale of public

property, not the purchase. This construction is not supported by the text of Section 121.22(G)(2) and is not a "liberal" construction mandated by the Open Meetings Act.

II. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici Curiae joining this brief are Gatehouse Media Ohio Holdings II, Inc. d/b/a The Columbus Dispatch, The Cincinnati Enquirer, a Division of Gannett GP Media, Inc. and Copley Ohio Newspapers, Inc. d/b/a Akron Beacon Journal. These media entities, and countless others, frequently rely upon public records to report on matters of public concern. Amici curiae have an interest in ensuring that courts correctly interpret the Public Records Act, including the procedures by which denials of access to public records are resolved.

III. THE COURT OF APPEALS FAILED TO APPLY A LIBERAL CONSTRUCTION CONTRARY TO R.C. 121.22

The text of R.C. 121.22(G)(2) provides as follows:

"To consider the purchase of property for public purposes, the sale of property at competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use property in accordance with section 505.10 of the Revised Code, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers."

The Appellants contend that the condition—"if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose

personal, private interest is adverse to the general public interest"—applies to the purchase of public property as well as to the sale of public property. There are several reasons why this text supports the construction urged by Appellants. First, there is nothing in the text to indicate it applies only when the public office is **selling** property. There is no punctuation to indicate this distinction, nor words to indicate any such distinction. Had the legislature intended the provision to apply only to sales of property, it could have easily accomplished this by adding the words "related to the sale" after "premature disclosure of information." This court should not effectively add those words.

In addition, if the condition applied only to the sale of property, the legislature would have said the following: "if premature disclosure of information would give an unfair competitive or bargaining advantage to **the purchaser**" instead of "to a person whose personal, private interest is adverse to the general public interest."

Moreover, the last sentence of section (G)(2) applies where covert information is provided to the buyer **or** seller of the public property who has received covert information from a member of the public body that "has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers." This demonstrates that the legislature was concerned with the unfair advantage to both buyers and sellers of public property. The condition thus applies to the potential purchase and sale of public property.

Despite this evidence to the contrary, the Court of Appeals decreed at paragraph 22 of its decision, with no support, that "the ordinary meaning is clear," thereby shutting down consideration of alternate interpretations.

The appellate court attempted to justify its arbitrary action by looking at "how this would work in practice." But that view doesn't establish the point. The appellate court at paragraph 23 said:

When a public body is seeking to purchase property, it usually does so with the intent to get the best value for the public. A public discussion about the offer, negotiation strategy, and material terms would likely reveal those critical details to a potential seller. In turn is reasonable to assume most sellers would pursue maximum profit with that information.

But this analysis ignores the text of 121.22(G)(2), which accounts for this prospect. In that instance, the statute would allow for an executive session, since premature disclosure of the information would benefit a party whose interests are adverse to the public body. This suggests the condition applies to purchases and sales.

But the most compelling reason for adopting the construction of section (G)(2) to apply the condition to the purchase and sale of public property is because the legislature compels that construction. The preamble to R.C. 121.22 plainly says "This section shall be **liberally construed** to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." (emphasis added). The Ohio Supreme Court has explained what a liberal construction means in this context: "Further, when the text of a statute makes its purpose clear, and we must choose between two permissible readings of the statutory text, an interpretation that advances the purpose of the statute is to be preferred over one that would thwart that purpose." *State ex rel. Bratenahl v. Village of Bratenahl*, 157 Ohio St.3d 309, 2009-Ohio-3233, 136 N.E.3d 447, ¶ 15, citing *Griffin v. Oceanic Contrs., Inc.*, 458 U.S. 564, 571 (1982).

This test from *Bratenhal* establishes that only where a liberal construction results in an "impermissible" reading of a statute may the court ignore that construction. Here, reading Section (G)(2) as imposing the condition on the purchase as well as the sale of public property is not an impermissible reading. And because that reading of the statute promotes transparency, that is the reading this court must adopt.

The liberal construction test Appellants advocate is similar to the concept of the "innocent construction" rule in defamation law. Under the innocent construction rule, "[i]f allegedly defamatory words are susceptible to two meanings, one defamatory and one innocent, the defamatory meaning should be rejected, and the innocent meaning adopted." *Hartman v. Kerch*, 2023-Ohio-1972, 217 N.E. 3d 881, ¶ 58 (8th Dist.2023), quoting *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 372, 453 N.E.2d 666 (1983); see also *Van Deusen v. Baldwin*, 99 Ohio App.3d 416, 419, 650 N.E.2d 963 (9th Dist.1994). "It matters not that the defamatory meaning is the more obvious one. So long as the statement may reasonably be read to have an innocent meaning, the innocent construction rule commands that the statement be deemed non-defamatory." *Id.*, quoting *Boulger v. Woods*, 917 F.3d 471, 483 (6th Cir.2019)

The innocent construction rule exists to promote robust discussion, free from the chilling effect of a potential libel suit. Similarly, the liberal construction compelled by the Open Meetings Act exists to promote government transparency. Thus, only where a court can find no other construction should it opt for one that limits transparency. That is not the case here. Appellees' construction may be a reasonable one. But that is not determinative. The determinative question is whether Appellants' construction is unreasonable. The Appellees do not present any argument to that point. Indeed, they could not. In the absence of appropriate punctuation or wording, the Appellees cannot in good faith contend that theirs is the only

reasonable construction. And because they cannot do so, this court must adopt the Appellants' construction.

IV. CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Fifth District Court of Appeals and issue a ruling in favor of Appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Amicus Brief of Gatehouse Media Ohio Holdings II, Inc. d/b/a The Columbus Dispatch, The Cincinnati Enquirer, a Division of Gannett GP Media, Inc. and Copley Ohio Newspapers, Inc. d/b/a Akron Beacon Journal has been served via electronic mail pursuant to Sup.Ct.Prac.R. 3.11(C) upon counsel of record for Appellee this 17th day of January, 2024.

/s/ John C. Greiner
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